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# IMPLEMENTATION OF THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT

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## HEARING BEFORE THE SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED THIRD CONGRESS SECOND SESSION

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SEPTEMBER 22, 1994

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**Serial No. 83**



Printed for the use of the Committee on the Judiciary

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# **IMPLEMENTATION OF THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT**

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**THURSDAY, SEPTEMBER 22, 1994**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The subcommittee met, pursuant to notice, at 10:40 a.m., in room 2237, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, Don Edwards, F. James Sensenbrenner, Jr., and Steven Schiff.

Also present: Melanie Sloan, assistant counsel; Vicki Shabo, secretary; and Andrew Cowin, minority counsel.

## **OPENING STATEMENT OF CHAIRMAN SCHUMER**

Mr. SCHUMER. Good morning.

The Chair has received the request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography or other similar methods in accordance with committee rule 5 which will be granted unless there is objection. Without objection.

Well, good morning, ladies and gentlemen. The purpose of this hearing is to consider whether the Freedom of Access to Clinics Entrances Act, commonly referred to as FACE, is stopping violence at abortion clinics.

The purpose of FACE, as everyone here knows is to allow the Federal Government to use all necessary resources to put an immediate end to clinic violence and to prosecute the perpetrators of such heinous crimes to the fullest extent of the law.

It creates Federal criminal and civil remedies that may be invoked against those who use blockades, assaults and other violent and threatening tactics against women who seek reproductive health services, the providers of such services, and their respective families.

FACE only became law last May. Yet since that time, it is very clear that abortion clinic violence has continued.

On July 29, 1994, Dr. John Britton and his volunteer escort Jim Barrett were murdered when antichoice extremist Paul Hill fired multiple blasts into their truck with a 12-gauge shotgun.

Later that night, a clinic in Falls Church, VA, was firebombed.

Less than 2 weeks later, a Planned Parenthood facility in Brainerd, MA, which did not provide abortions, was completely destroyed by arson.

In mid-August, a homemade firebomb was left in the driveway of a Vermont Planned Parenthood Office which also does not perform abortions.

During the month of August, at least nine doctors who provide abortions in various parts of the country received the same chilling death threat letter. The writer claimed that certain Americans have decided to take a number of abortionists out at the same time all around the country, no matter where you are. Bulletproof vests are not enough, the letter continued. All hell is going to break loose and you have been targeted for a front row seat.

Three States—Mississippi, North Dakota, and South Dakota—now each only have one abortion clinic. And at the lone Mississippi clinic, Dr. Joseph Booker is under 24-hour protection of U.S. marshals.

The Dallas Morning News quoted Roy McMillan, an associate of Paul Hill's, who has stated that he believes in justifiable homicide, as saying that the noose of the prolife movement is tightening around Booker's neck.

Indeed, abortion service providers have been so persecuted that I encountered a great deal of difficulty finding a doctor to testify here today. Many doctors were too terrified to come forward and testify, fearing that testifying might lead to their being targeted by protestors. Other doctors were unable to attend because there are now so few doctors willing to perform abortions that many doctors willing to perform them are unable to take a day off to come to Washington.

I find it ironic that Americans condemn other countries, justifiably, where novelists such as Salman Rushdie were threatened with death because they dared to voice their views, yet in our own country we tolerate an environment in which many doctors are afraid to perform abortions, an equally protected Federal right.

Still others are afraid to talk about the persecution they suffer as a result of performing abortions. Tragically, this fear is not unjustified. Just like Salman Rushdie in Iran, doctors here in the United States have good reason to fear they will be harmed simply for speaking out.

The right to choose and the right of doctors and clinic personnel to assist women in exercising that right is constitutionally protected, just as the right of every American citizen to vote or to speak freely is protected.

The constitutional right to choose means nothing, however, if exercising that right means facing threats, harassment and now even murder. The constitutional right to protest does not include the right to harass, does not include the right to threaten, and it most certainly does not include the right to kill.

Simply passing FACE, the law, has not and cannot put a stop to the violence, but the task before us now is to create a strategy to ensure that the new FACE law is effective. We need to be sure that there are real teeth behind the law so that those who choose to engage in a campaign of terrorism understand simply that they will be prosecuted for such conduct.

Today, we will hear from officials from the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms. We will ask them whether it is simply too soon to tell how effective FACE can

be, whether we need regulations or whether we need stronger enforcement mechanisms.

It is my hope that this hearing will shed some light on the problems still facing abortion clinics and assist the administration in developing strategies to better utilize and enforce the FACE Act. Extremists everywhere must understand that violence at abortion clinics is not a justifiable expression of moral outrage. I repeat, violence at abortion clinics is not a justifiable expression of moral outrage. It is a serious crime.

I recognize Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Let us first be clear about what this hearing is not. It is not about a disagreement over how to treat killers. I think killers should be prosecuted and, if convicted, under certain circumstance suffer the death penalty. The issue here is the right of free speech for people who have never killed, do not plan to kill and never will kill.

I think they have the right to protest peacefully. I even think they have the right to protest noisily and participate in acts of civil disobedience like Martin Luther King and Mahatma Gandhi.

Should we treat pro lifers worse than we treated the antiwar protestors of the 1960's? I think not. Should we treat them worse than we treated Bill Clinton and others in his administration when they protested against the Vietnam War? No.

Remember the Students for a Democratic Society, the SDS, and the Black Panthers? Some of them were really violent. They murdered police officers. But we did not condemn everyone who fought for civil rights or who opposed the Vietnam War.

In those days, the Federal Government protected the rights of the protestors. Even in the segregated south nobody talked about the Federal Government creating a buffer zone or keeping the demonstrators out.

To make matters worse, some abortion activists are now calling upon the FBI to infiltrate pro life groups. According to the New York Times, the Attorney General has already ordered the FBI to take the first steps.

Again, this reminds me of the 1960's and 1970's when the FBI infiltrated political groups like the Communist Party of the United States, and liberal Members of Congress were outraged. Some of those most outraged sat on, and still sit on, the Judiciary Committee and this subcommittee. One of them is Mr. Edwards, from California, with whom I worked during my 8½ years as the ranking member of the subcommittee which he has chaired for a long period of time to help develop, refine and provide oversight on guidelines for the FBI so that they would not get involved in infiltrating political groups simply because these groups expressed a politically incorrect feeling in the mores of the day. However, many of these people are now silent on the rights of pro lifers.

So let us be clear. This is not really about how to treat murderers. They should be prosecuted, and they should be punished if convicted. The issue is not crime fighting. It is protecting the first amendment to the U.S. Constitution, protecting your right to say what you want and to say it how you want to, no matter how ob-

noxiously or how noisily, even if the Government and the vast majority of people disagree.

It must be tempting to do what you want to do when your party controls both Houses of Congress and the Presidency. It must be tempting when the media is—overwhelmingly—is on your side of the issue. It must be tempting to try to take away the constitutional rights of people who disagree with you. I hope that supporters of FACE have the good judgment and maturity to avoid that temptation.

Thank you.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. No, thank you.

Mr. SCHUMER. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. I would like to make two points, please.

First, I want to say that, personally speaking, I am prochoice. I think the right to have an abortion should be a decision that remains with the woman. And, further, as you recall I voted for this particular act.

However, I think we should keep our rhetoric very careful here. The overwhelming majority of people who identify themselves in the prolife movement are nonviolent in their approaches, and they are as appalled by the violence done by a few fanatics as anyone else is, whether they call themselves prochoice or have no opinion on the issue at all. I do not think, through these hearings, we should confuse the issue of the fact that we are dealing with a handful of people who use or threaten to use violence or at times use other illegal measures, which should be addressed. We shouldn't confuse them with those who are expressing a first amendment, constitutionally protected right to express their particular views.

Second of all, regardless of whether I, or any other member of this committee, vote for or against a particular piece of legislation, I want to commend you for holding oversight hearings. Once the Congress has enacted and the President has signed into law a bill, I think it is very appropriate to have a hearing in which we look into how is this being—how is this law, whatever it might be, being enforced. How is it being implemented? Are there problems? Can the Congress help in the future?

I just want to mention that I hope, Mr. Chairman, that you will have the same position on holding a hearing a little later on next year into the implementation of the crime bill that was signed into law a few days ago by President Clinton. A number of issues were raised about that bill, which I think at an appropriate time should be examined by this subcommittee. For example, how many police were actually funded through the bill? How many new prison cells were actually constructed? What kinds of prevention programs were actually funded and in what parts of the country?

A matter I am particularly concerned about is a portion of the crime bill, which I supported all through the proceedings, called the Youth Handgun Safety Act, which in a nutshell says that it is illegal under most circumstance for a teenager to possess a handgun. It says more, but that is to me the kernel of the bill.

And yet the President of the United States, upon signing the bill, had to say to the Justice Department I would like to give you 100 days to plan on how to enforce it. Well, this particular provision was in the bill for many months. In my judgment, with respect, I think the Justice Department should have been ready on day one with how they are going to enforce it. To me, it is amazing with all the carnage committed by teenagers with handguns right now, today, the Justice Department is not ready to do something about it today.

Nevertheless, the President gave them 100 days. I think the Congress should give them 100 days, but in 100 days, Mr. Chairman, I respectfully recommend that we have a hearing on that part of the act and other parts of the act to see what is actually going on.

Thank you, Mr. Chairman. I yield back.

Mr. SCHUMER. Well, thank you, and I would like to make two brief statements.

First, I certainly agree with you, Mr. Schiff, we should have oversight hearings on the crime bill. I put so much energy and passion into the bill because I believed that cops ought to be out on the streets and that prison cells should be built and that prevention programs ought to be up and running, and I want this subcommittee in as bipartisan a way as possible to do its darndest to see the promises of the bill become reality.

It was my goal when I supported the trust fund so strongly, against the opposition of many Democrats on this committee to see that that money actually be allocated, and not just another empty promise.

On the main point of this bill, I don't think we are talking about free speech at all. That was not the reason for the FACE bill. There is no contention in this bill, or with anyone I know, to interfere with the peaceful right of protest.

As I have mentioned several times in the subcommittee, the bishop in my area diocese of Brooklyn says a rosary in front of an abortion clinic every month. I don't believe in his view but I respect his commitment, his passion and his faith and certainly his ability as an American to exercise his rights. That is not what we are talking about here.

To deliberately blur the line between, as Mr. Schiff correctly states, the violent few who may not murder—some do, a few do, a few more harass and many blockade—and those who use legitimate, nonviolent, peaceful protest, in my judgment, does a disservice not only to those who are peaceful in exercising their beliefs but also to the American way.

And we all know this hearing is not about peaceful protest. This bill was not about peaceful protest. That is why many, many prolife individuals supported the bill. It is about enforcing the American right and preventing those who somehow think they are morally superior, for whatever reason they deem it, from taking that right away from the rest of Americans who are, by our Constitution, created equal under the law.

With that, let me introduce our first panel.

Today, we will hear from two officials from the Justice Department: Jo Ann Harris, the Assistant Attorney General for the Crimi-

nal Division at the Department of Justice; and Deval Patrick, the Assistant Attorney General for the Civil Rights Division.

We will also hear from James Brown, the Chief of the Explosives Division at the Bureau of Alcohol, Tobacco and Firearms.

Mr. Patrick and Ms. Harris, and Mr. Brown, I very much appreciate you appearing today. Although I am aware you all have busy schedules, I would greatly appreciate it if you could remain with us throughout the second panel, because the second panel consists of people who confront threats, harassment and violence by anti-abortion extremists every day.

These are not people who are bothered by peaceful protests. These are people who are bothered by violence, harassment and threat. Let us make that distinction absolutely clear. I think it would be beneficial if you could hear their stories.

Assistant Attorney General Patrick, you may begin. Let me state that your entire statements will be read into the record. We have a big panel today. We started a little late so we will try to keep the hearing moving at a brisk pace.

**STATEMENT OF DEVAL PATRICK, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. PATRICK. I understand, Mr. Chairman. Thank you. I will try to keep my oral statement brief.

Mr. Chairman, Congressman Sensenbrenner, and members of the subcommittee, I want to thank you for the invitation to testify today regarding the enforcement of FACE and the Department of Justice's efforts to stop violence against reproductive health providers.

Thanks to the leadership of the chairman and others on this subcommittee, Congress passed FACE last May, and President Clinton signed it into law on May 26, 1994, about 4 months ago.

The act gives both Federal and State law enforcement officials a valuable new tool to combat violence and obstruction that prevent women from seeking reproductive health services privately and safely. I hope we can demonstrate today that we are trying to enforce that statute in ways which respect the balance that the members of the committee have referred to this morning.

As an initial matter, seven lawsuits naming the Attorney General as defendant were filed in Federal courts challenging the constitutionality of the act, at least two on the very day that the President signed it into law. I am very pleased to report that as a result of the vigorous defense of the act mounted by the Civil Rights and the Civil Divisions in the Department of Justice, six of those cases have been decided, and each resulted in a solid holding that the law is clearly constitutional. It does not intrude on first amendment rights of speech on its face or rights of free expression of religion, and Congress plainly had authority to enact it.

The Department of Justice has devoted considerable time and resources in the 4 short months since passage of the act and its implementation. We have been in frequent communication with the U.S. attorneys offices around the country, through written communications, offering guidance on FACE enforcement, and through

consultation about specific instances in which activity that might violate FACE was anticipated or had in fact occurred.

In June, the Civil Rights Division, working closely with the U.S. attorneys offices, filed the first criminal charges pursuant to FACE's prohibition of physical obstruction against six individuals in Milwaukee, WI. They successfully shut down a clinic one morning, shut it down completely by using a combination of disabled cars, chains, locks and cement in elaborate ways that proved very effective. We are awaiting a trial date in that matter.

Mr. SCHUMER. I would take it, Mr. Patrick, that has nothing to do with the first amendment—using cars and chains and cement?

Mr. PATRICK. I think you can take that right to the bank, Mr. Chairman.

In our second prosecution pursuant to FACE, the Department sought and a grand jury returned a four-count indictment against Paul Hill on August 12, 1994, for the shotgun slayings of Dr. John Britton and his volunteer escort James Barrett and the wounding of Lt. Comdr. Barrett's wife, June Barrett.

Local authorities and the FBI worked together closely to investigate that crime. The indictment was sought after consultation with the U.S. attorneys for the Northern District of Florida and with local State prosecutors. The case is being prosecuted by the Civil Rights Division and the U.S. attorneys office jointly.

In deciding to proceed with a FACE prosecution in this situation the Department considered the strong Federal interest in enforcing FACE and the way in which a Federal prosecution would mesh with a local prosecution to ensure the surest and swiftest punishment for this terrible crime.

In our view, the Federal interest requires that we send the strongest message possible to two groups. First, extremists. Extremists who consider engaging in violence against providers must know that they face the full force and weight of the Federal power for their actions.

Second, providers of reproductive health services must be reassured that the Department of Justice will enforce FACE vigorously. As this subcommittee well knows, violence and threats of violence directed at providers have unfortunately, but understandably, had their intended effect. They have reduced the numbers of physicians and others willing to provide abortions. If the constitutionally protected right to choose is to remain meaningful, we must enforce FACE vigorously to ease the fears of health care providers.

Now, it is important to achieving the goals of FACE that we develop a coordinated criminal and civil enforcement program to address both clinic obstruction and violence. We will strive to prevent blockades through injunctive action, use criminal prosecutions to punish those who do obstruct clinics and seek damages and civil penalties against violators. We will also seek civil remedies where appropriate against individuals who threaten or engage in violence.

We currently have under review quite a number of matters to determine whether civil proceedings are warranted. In that regard, we are working out a protocol through the National Association of Attorneys General to assist State attorneys general in bringing civil rights actions generally, including FACE actions. As Congress recognized by giving State attorneys general explicit authority to

bring civil FACE actions, they offer a valuable resource in the struggle to protect civil rights.

The Civil Rights Division is committed to the vigorous enforcement of FACE. We are also mindful, however, of the central importance in our society of protecting the right of individuals to associate with others of similar views to further social or political goals. In conducting our investigations and prosecutions, therefore, we will observe scrupulously all appropriate restrictions and evaluate carefully and continuously the effect of our actions as a practical matter on the first amendment rights of all individuals.

That concludes my oral statement. And my colleague now, Jo Ann Harris, will address the Department's Special Task Force on Clinic Violence, after which we can respond to some of your questions.

Mr. SCHUMER. Thank you, Mr. Patrick.

Assistant Attorney General Harris, you may proceed.

**STATEMENT OF JO ANN HARRIS, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE**

Ms. HARRIS. Mr. Chairman and members of the subcommittee, I appreciate the chance to discuss with you the response of the Department of Justice to violence directed at reproductive health service providers and clinics.

I want to make one point very, very clear. The focus of our criminal investigation is on violence, acts of violence—shootings, bombings, murders, criminal threats that are directed at doctors and other people and at clinics that provide services. This is not, for us, a political issue. It is not a prochoice or a prolife issue. It is an antiviolence issue, and we are approaching it as such in our criminal investigations.

But, at the same time, I want to assure the committee that we are sensitive to the need for special care on the part of law enforcement in responding to criminal activity that occurs on the fringes of first amendment protections such as protest movements. I want to assure you that we are exercising the highest degree of caution and respect for the rights of all people as we investigate violent criminal activity related to the providing of reproductive health services.

Following the murder of Dr. David Gunn and the shooting of Dr. George Tiller last year, the Attorney General directed the Criminal Division to coordinate an interagency response to violence and criminal threats of violence against clinics and providers. We worked with the U.S. attorneys and Federal investigators in districts where acts of violence had occurred. We facilitated the sharing of information and assisted in locally based investigative efforts.

Our efforts were intensified and centralized following the tragic deaths in Pensacola on July 29, 1994. At the direction of the Attorney General, I established a task force in the Criminal Division to investigate acts of clinic violence to determine whether there is any criminal connection between those acts and among the people committing them.

The investigation is under the direction of a very experienced attorney in the Criminal Division who reports directly to me. The

Civil Rights Division has contributed experienced prosecutors, very fine prosecutors to the task force. The FBI, the ATF and the U.S. Marshals Service are represented on the task force. Members of the task force have been devoting themselves full time to the effort. The task force has become the focal point for information regarding antiabortion violence and threats of violence.

We are confident that this focused response is the most effective way to investigate the violence and to prosecute, convict and punish the criminals who are committing violent acts.

The FACE statute is, of course, a valuable Federal tool in criminal investigations relating to antiabortion violence. We are coordinating with the Civil Rights Division the decision whether or not to use FACE in cases that involve violent acts.

As my colleague has described, the Department has filed criminal charges under FACE in Milwaukee and in Pensacola. We will continue to evaluate the appropriateness of using the criminal provisions of FACE as well as every other Federal violent crime statute in any case involving acts of violence against doctors and providers.

We have taken other measures in addition to the establishment of the task force. Immediately following the recent shootings in Pensacola, Federal marshals were deployed to a number of clinics around the country to assist local police in deterring acts of violence. Marshals also provided protection to certain providers, based in each case on information that there was a specific threat of harm. These judgments were made, erring, if at all, on the side of excessive caution. The efforts of the Marshals Service continue.

The Department of Justice is committed to enforcing FACE to the fullest extent appropriate. That includes the use of civil actions and criminal prosecutions, as my colleague has said. At the same time, we are acutely aware of the importance of protecting the right of all people to engage in peaceful, nonobstructive expression of their views. We are also mindful of the importance of protecting the right of people to associate with others who agree with them, so long as the agreement does not constitute a criminal conspiracy. In conducting our investigations and prosecutions, therefore, we have been and are and will be extraordinarily careful observing the appropriate guidelines.

I would be pleased to answer your questions.

Mr. SCHUMER. Mr. Brown.

Ms. HARRIS. Oh, may I say one more thing?

Mr. SCHUMER. Please, Ms. Harris.

Ms. HARRIS. I am afraid that other business is going to prevent me from staying to hear the panelists after this panel, and I do regret that, but I assure the committee that I will read the testimony of each of your panels and take very seriously what they say.

Mr. SCHUMER. Thank you.

[The prepared statement of Ms. Harris and Mr. Patrick follows:]



# Department of Justice

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STATEMENT OF

JO ANN HARRIS

ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

AND

DEVAL PATRICK

ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

ABORTION CLINIC ACCESS

PRESENTED ON

SEPTEMBER 22, 1994

Mr. Chairman and Members of the Subcommittee, we thank you for inviting us to appear today to discuss the implementation of the Freedom of Access to Clinic Entrances Act (FACE) and the Department's efforts to investigate violence against abortion providers. The effort to stop violent interference with the delivery of reproductive health services and to protect the right of access to those services, while remaining vigilant with respect to the First Amendment rights of all Americans, is a major priority of the Department of Justice.

Following the shooting of Dr. David Gunn last year, Attorney General Reno took two important actions. She directed the Criminal Division to coordinate an inter-agency response to violence against clinics and providers. She also directed attorneys in the Civil Rights and Criminal Divisions to work with Congress to develop a new federal law to attack directly the problems of violence and clinic blockades. The task force was formed, and thanks to the considerable efforts of the Chairman and other Members of the Subcommittee, Congress passed the Freedom of Access to Clinic Entrances Act. President Clinton signed the bill into law on May 26 of this year. In the four months since that date, the Department of Justice has spent considerable energy and resources implementing the statute.

FACE gives law enforcement officials a valuable new tool to combat violence and obstruction designed to prevent women from exercising the constitutionally protected right to make a deeply private choice, a choice to terminate a pregnancy. Seven challenges to the constitutionality of FACE naming the Attorney

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General as the defendant were filed in federal court shortly after it was signed into law this year; some on the very day that the President signed the bill. The Department of Justice (through the Civil Rights and Civil Divisions) responded with a vigorous defense of the constitutionality of the Act; to date, six of the challenges have been decided and all have resulted in dismissal of the complaints and solid holdings that the law is constitutional. The opinions affirm that FACE does not intrude on First Amendment rights of expression or religious exercise and that Congress had authority to enact the law. Two of those cases are now on appeal in the United States Court of Appeals for the Fourth Circuit and one is in the Eleventh Circuit. The Department expects to file its briefs in support of the constitutionality of the Act next week.

The Act is designed to ensure the continued access of women to reproductive health services in important ways. It addresses the very direct problem of physical obstruction that prevents women and providers of reproductive health services from gaining access to medical and other facilities. It does so by making it unlawful to use or attempt to use physical obstruction to injure, intimidate, or interfere with a person because that person is seeking to obtain or provide reproductive health services. FACE prescribes both civil and criminal penalties for individuals who engage in such physical obstruction.

In June, the Civil Rights Division filed the first criminal charges pursuant to FACE's prohibition of physical obstruction

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against six individuals in Milwaukee. The Division continues to investigate and review evidence regarding numerous incidents to determine whether criminal or civil action would be appropriate. Using the concurrent authority of state law enforcement, the Attorney General of New York has included a count pursuant to FACE in a civil action filed against clinic blockaders in state court in New York. The private civil authority of the Act has been invoked by the clinic that is involved in our Milwaukee prosecution in a suit seeking injunctive and monetary relief.

It is important to achieving the goals of FACE to develop a coordinated civil and criminal enforcement program to address physical obstruction of clinics. We will strive to prevent blockades of abortion clinics through injunctive relief when appropriate. We will address those unlawful blockades that do occur through criminal prosecutions where appropriate. We will also use the damage and civil penalty provisions of FACE to seek compensation for victims and to deter future violations. In all of these activities, we will observe the First Amendment right of individuals to express themselves through peaceful means.

The Act also makes unlawful the use of force or threats of force against those providing or seeking to obtain reproductive health services. The Act provides for criminal penalties ranging from one year to life imprisonment for individuals who violate these prohibitions. In our view, it is crucial to enforce these prohibitions vigorously to send a strong message to two groups. First, extremists who consider engaging in future acts of

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violence must know that they may face federal authority for their actions. As Congress recognized in enacting FACE, state and local efforts to deter violence -- even when undertaken vigorously and with successful results -- have sometimes proven inadequate. Potential violators of FACE must understand that the full force of the federal government -- and not just state or local government -- may be directed against them if they use or attempt to use force to injure, intimidate, or interfere with people who are seeking to exercise their rights to obtain or provide reproductive health services.

Second, providers of reproductive health services must be reassured by the message that the Department of Justice enforces FACE vigorously. Violence and threats of violence directed at abortion providers have unfortunately had their intended effect. They have reduced the number of physicians and others willing to provide abortions. As a result, many women are left with a constitutionally protected right to terminate a pregnancy, but are unable to find a physician to make that right meaningful. We must, therefore, enforce FACE vigorously to ease the fears of health care providers. They must be made confident that the federal government will use appropriate means to deter and punish attacks against them.

The brutal slaying of Dr. John Britton and his volunteer escort, James Barrett, and the wounding of Mr. Barrett's wife, June, were the first acts of violence against abortion providers since the passage of the Act. Local authorities and the FBI

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worked together closely to investigate the crime. After consultation with the United States Attorney for the Northern District of Florida and discussions with local prosecutors, the Department sought -- and the grand jury returned on August 12, 1994 -- a four count federal indictment against Paul Hill. The indictment charges Hill with three counts of violating FACE, one for each of his shooting victims, and one count of using a weapon in the commission of a felony. If convicted, he could be sentenced to life imprisonment. The case is being prosecuted jointly by the Civil Rights Division and the United States Attorney's office. Trial is scheduled to begin October 3.

Throughout this effort, the Civil Rights Division and the U.S. Attorney's office worked closely with the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, the Florida Department of Law Enforcement, and the Pensacola Police Department. The State is proceeding with its prosecution, which is scheduled to follow the federal prosecution.

In determining whether to go forward with a FACE prosecution, the Department considers the strong federal interest in enforcing FACE, and the many strategic considerations that point toward the surest and swiftest punishment. One such consideration is whether a subsequent state prosecution would be barred by a state double jeopardy constraint. These considerations reflect the standards that apply generally to federal prosecutions.

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In addition to our enforcement activities in Milwaukee and Pensacola, we have been in touch with United States Attorneys, FBI offices, and the Marshals Service around the country to alert them to FACE and to give them the names of attorneys in the Department of Justice whom they can contact. Whenever we have had the benefit of advance word of imminent activities that might violate FACE, attorneys from the Criminal and Civil Rights Divisions have been in close consultation with federal officials on the scene.

Immediately following the recent shootings in Pensacola, federal marshals were deployed to a number of clinics around the country to assist local police in deterring acts of violence. The Marshals also provided protection to certain abortion providers where there was a strong factual predicate supporting a conclusion that they were at risk. The efforts of the Marshals Service continue.

Meanwhile the work of the Task Force has expanded and intensified. The Task Force consists of experienced prosecutors from the Criminal and Civil Rights Divisions, and officials of the FBI, Marshal's Service, and Bureau of Alcohol, Tobacco, and Firearms. The Task Force is charged with investigating criminal activity against reproductive health care providers and with determining whether that activity is the result of a conspiracy. Members of the task force have been devoting themselves full time to this effort. The Task Force has become the focal point for

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information regarding anti-abortion violence and threats of violence.

The Department of Justice is committed to enforcing FACE to the fullest extent consistent with the civil liberties guarantees of individuals in this country. That includes the use of civil actions and criminal prosecutions to deter further violence and to ensure that women have access to reproductive health services. In all of our activities, we are acutely aware of the importance of protecting the right of individuals to engage in peaceful, non-obstructive expression of their views. We are also mindful of the importance of protecting the right of individuals to associate with others of like views in the absence of a criminal conspiracy. In conducting our investigations and prosecutions, therefore, we will, as always, observe scrupulously appropriate guidelines.

We would be pleased to answer your questions.

Mr. SCHUMER. Mr. Brown.

**STATEMENT OF JAMES L. BROWN, CHIEF, EXPLOSIVES DIVISION, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY**

Mr. BROWN. Mr. Chairman and members of the subcommittee, part of my responsibilities as the Chief of the Explosives Division for the Bureau of Alcohol, Tobacco and Firearms is to oversee ATF's arson and explosives enforcement efforts. I am here today to discuss ATF's capabilities and how they relate to the investigation of abortion clinic violence.

ATF has been investigating and tracking arson and bombing incidents relating to abortion providers since 1982. To date, 148 abortion clinic incidents involving either arson fires, bombings or attempts have been investigated by ATF. The total damage resulting from these incidents is approximately \$12 million. We cannot begin to estimate the impact on the people and the emotional trauma they have suffered as a result of these crimes.

Of the 148 abortion clinic arson and bombing incidents investigated since 1982, 67 of these incidents have been adjudicated, with 51 individuals brought to justice. In addition, several other investigations are actively being pursued by ATF, with indictments and arrests and prosecutions expected in the near future.

In promoting its jurisdictional role, ATF has committed itself to providing investigative assistance to Federal, State and local law enforcement in their efforts to curtail violence directed against abortion clinics. Normally, there are several related violations under the jurisdiction of the investigating agencies, but experience has shown that in those cases involving concurrent jurisdiction, a joint effort ensures the most comprehensive and effective investigation.

This cooperative effort was significantly expanded earlier this year when ATF and the FBI initiated a joint task force to aggressively address abortion clinic violence throughout the United States. This investigative approach to a unique crime problem was developed to pool the resources of ATF and the FBI toward combatting the ongoing violence directed at abortion clinic facilities and providers nationwide and is intended to foster closer working relations between our two agencies.

Clearly, it is the combined talents and resources of the participating agencies that are vital to the apprehension of those responsible for such violent acts.

Throughout the past year, ATF has closely coordinated its investigative efforts with the Department of Justice. These discussions have included a comprehensive overview of ATF's enforcement efforts in this area during the past 12 years along with the status of ongoing investigations and pending prosecutions. We continue to share such information with DOJ officials, which has resulted in a better understanding of the significance of this national crime problem.

Our past and continuing efforts to combat abortion clinic violence also includes the use of ATF's National Response Team. The immediate deployment of a highly trained and specialized team of agents and support personnel to the scene of a major arson or bombing

has proven to be extremely effective. The effectiveness of this concept and the expertise of the team members were most evident in ATF's response to the World Trade Center bombing as well as the NRT activation to the series of explosives incidents involving parcel bombs resulting in five fatalities and several injuries in upstate New York in December of last year.

ATF maintains the Explosives Incidents System, or EXIS, which is a computerized data base which provides valuable assistance to investigators concerning the details from reported arson and explosives incidents, and it proved helpful in determining motives, patterns, trends and signatures. EXIS currently contains over 194,000 detailed records from more than 56,000 explosives and arson-related incidents and is the only computerized data base maintained by a Federal law enforcement agency.

The initiative that put ATF in the forefront of arson investigation is its Certified Fire Investigator, or CFI, Program. Through this program ATF provides experience, training and education to selected special agents to enable them to determine fire cause and present their findings and opinions in court in a credible manner as expert witnesses.

Today, there are 48 CFI's stationed throughout the United States, and in 1993 these men and women participated in approximately 1,700 fire scene examinations involving 127 fatalities, 374 injuries and \$317 million in property damage.

ATF is committed to bringing the full force of its enforcement authority to bear against those who perpetrate violence against abortion clinic facilities and providers. To this end, in November of last year an alliance was formed between ATF and the National Abortion Federation and Planned Parenthood Federation of America re-emphasizing ATF's commitment to the vigorous investigation of arson and bombings directed at abortion clinic facilities.

As a result of this alliance, ATF Director Magaw announced the creation of an ATF hotline, which is 1-800-ATF-4867, maintained at ATF command headquarters, which is available 24 hours a day, 7 days a week.

As part of this initiative, the National Abortion Federation and Planned Parenthood Federation of America established a reward of up to \$100,000 per incident for information leading to the arrest and conviction of persons responsible for arson fires, bombings and serious acts of vandalism directed at abortion and family planning clinics.

In April of this year, ATF participated in an abortion clinic violence seminar in Washington, DC, sponsored by the Department of Justice. Also in attendance were representatives from the FBI, key DOJ officials and selected U.S. attorneys from those judicial districts which had experienced significant problems related to abortion clinic violence.

The 2-day meeting resulted in an excellent exchange of information between all those in attendance, to include an overview of the violence associated with antiabortion activities, the status of ongoing investigations and prosecutions, the development of investigative strategies and further solidified the need for closer coordination between ATF, the FBI, and DOJ to more aggressively address

abortion clinic violence throughout the United States in a joint task force approach.

ATF is committed to fulfilling its congressional mandate to provide the most effective and professional investigative response available to arson and explosives incidents. Toward meeting this goal, ATF is fortunate to have the working relationship it does with its Federal, State, and local counterparts. It is imperative that this cooperative environment remain constant, given the growing crime problem we face.

Abortion clinic violence has been and will remain a top priority with ATF. We are totally committed to sharing our investigative efforts with all Federal, State, and local law enforcement toward fulfilling our mandate of curbing the violence of arson and bombings directed at abortion clinic facilities.

I appreciate the opportunity to appear before the subcommittee today and will be happy to answer any questions concerning ATF's efforts in this area.

Mr. SCHUMER. Thank you, Mr. Brown. I want to thank the whole panel.

[The prepared statement of Mr. Brown follows:]

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Statement of James L. Brown  
Chief, Explosives Division

Before the House Judiciary Committee  
Subcommittee on Crime and Criminal Justice

September 22, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. I AM JAMES L. BROWN, THE CHIEF OF THE EXPLOSIVES DIVISION, FOR THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (ATF). PART OF MY RESPONSIBILITIES IS TO OVERSEE ATF'S EXPLOSIVES AND ARSON ENFORCEMENT EFFORTS. I AM HERE TODAY TO DISCUSS ATF'S CAPABILITIES IN THIS AREA AND HOW THESE CAPABILITIES ENABLE US TO RESPOND TO ABORTION CLINIC VIOLENCE.

SINCE 1982, ATF HAS BEEN INVESTIGATING AND TRACKING ARSON AND BOMBING RELATED INCIDENTS DIRECTED AT ABORTION CLINICS. FROM THE OUTSET, ATF HAS MADE THESE INCIDENTS A TOP PRIORITY AND HAS INVESTIGATED THE VIOLATIONS UNDER ITS AUTHORITY DERIVED FROM THE NATIONAL FIREARMS ACT AND TITLE XI OF THE ORGANIZED CRIME CONTROL ACT OF 1970.

TO DATE, 148 ABORTION CLINIC INCIDENTS INVOLVING EITHER ARSON FIRES, BOMBINGS, OR ATTEMPTS HAVE BEEN INVESTIGATED BY ATF. THE TOTAL DAMAGE RESULTING FROM THESE INCIDENTS IS APPROXIMATELY \$12 MILLION. WE CANNOT BEGIN TO ESTIMATE THE IMPACT ON THE PEOPLE AND THE EMOTIONAL TRAUMA THEY HAVE SUFFERED AS A RESULT OF THESE CRIMES. SINCE 1982, OF THE 148 ABORTION CLINIC ARSON AND BOMBING INCIDENTS REPORTED TO ATF, 67 HAVE BEEN ADJUDICATED RESULTING IN CONVICTIONS, INDICTMENTS,

OR INCARCERATION IN A STATE MENTAL INSTITUTION. THOSE ACTIONS RESULTED IN 51 INDIVIDUALS BEING BROUGHT TO JUSTICE. THIS REFLECTS A CLEARANCE RATE OF APPROXIMATELY 45 PERCENT, WHICH IS FAR ABOVE THE NATIONAL ARSON CLEARANCE RATE. (1991 - 15.9 PERCENT)

ARSONS AND BOMBINGS ARE A NON-DISCRIMINATING CRIME. THEY TRANSCEND JURISDICTIONAL BOUNDARIES WHILE THEIR PERPETRATORS OFTEN TRANSCEND GEOGRAPHICAL BOUNDARIES. WE MUST RECOGNIZE THE FACT THAT ARSON, LIKE BOMBINGS, IS A VIOLENT CRIME AND NOT SIMPLY A PROPERTY CRIME OR AN INSURANCE INDUSTRY PROBLEM.

SINCE 1982, 19 STATES HAVE NOT REPORTED ANY BOMBING OR ARSON INCIDENTS. DURING THE SAME TIME PERIOD, THE HIGHEST NUMBER OF INCIDENTS DIRECTED AGAINST ABORTION CLINICS HAVE TAKEN PLACE IN CALIFORNIA (17), TEXAS (13), OHIO (11), AND FLORIDA (11).

AS TO METHODS EMPLOYED, THE RECORDED INFORMATION INDICATES THERE HAVE BEEN 112 ARSON INCIDENTS AS OPPOSED TO 36 BOMBING INCIDENTS. SINCE 1990, 53 INCIDENTS WERE ARSON AND 6 INCIDENTS WERE BOMBINGS.

THE MOST FREQUENTLY EMPLOYED METHOD IS A CRUDELY SET FIRE WHEREBY THE PERPETRATOR HAS INTRODUCED AN

ACCELERANT INTO A STRUCTURE THROUGH A FORCED DOOR, A WINDOW, OR THE ROOF, FOLLOWED BY VARIOUS TYPES OF COMBUSTIBLE MATERIAL.

IT IS NOT UNCOMMON TO OBSERVE A SCENE WHERE THE ARSONIST HAS MERELY PLACED ONE OR MORE SMALL FUEL CONTAINERS NEXT TO THE OUTSIDE WALL OF A CLINIC AND IGNITED THE FUEL, PRESUMABLY HOPING THE RESULTANT FLAMES WOULD ENGULF THE ADJACENT STRUCTURE.

TRADITIONALLY, ARSON AND EXPLOSIVES CRIMES HAVE ALWAYS BEEN DIFFICULT TO INVESTIGATE DUE TO THE FACT THAT THE RESULTANT FIRE OR BLAST WILL QUITE OFTEN CONSUME MOST OF THE PHYSICAL EVIDENCE. ATF HAS MADE CONSIDERABLE STRIDES IN THE CRIME SCENE INVESTIGATION OF THESE CRIMES.

PROVIDING SUPPORT TO ATF'S INVESTIGATIVE EFFORTS IS ITS NATIONAL LABORATORY SYSTEM, WHICH HOLDS THE DISTINCTION OF BEING THE FIRST FEDERAL LABORATORY SYSTEM ACCREDITED BY THE AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS. THREE MULTIDISCIPLINED LABORATORIES LOCATED IN WALNUT CREEK, CALIFORNIA, ROCKVILLE, MARYLAND, AND ATLANTA GEORGIA, SUPPORT ATF'S EXPLOSIVES ENFORCEMENT PROGRAM. AS WELL AS PROVIDING THE FULL RANGE OF TRADITIONAL FORENSIC ANALYSIS, THESE LABORATORIES ROUTINELY EXAMINE

BOTH INTACT AND DETONATED EXPLOSIVE DEVICES AND EXPLOSIVES DEBRIS IN ORDER TO IDENTIFY DEVICE COMPONENTS AND THE EXPLOSIVES USED.

ATF'S GREATEST ASSET IN PURSUING THESE VIOLATIONS ARE THE SPECIAL AGENTS WHO HAVE A LONG AND WELL-RESPECTED HISTORY OF AGGRESSIVELY INVESTIGATING BOMBING AND ARSON INCIDENTS. ALL OF OUR SPECIAL AGENTS ARE TRAINED AND EXPERIENCED IN THESE TYPE OF INVESTIGATIONS. SOME, THROUGH ADVANCED TRAINING, HAVE DEVELOPED EXPERTISE IN POSTBLAST ANALYSIS AND CAUSE AND ORIGIN DETERMINATIONS WHICH HAVE PAID OFF IN THESE INVESTIGATIONS.

CURRENTLY, ATF HAS FORMAL TASK FORCES ESTABLISHED IN THE CITIES OF SEATTLE, SAN FRANCISCO, HOUSTON, LOS ANGELES, CHICAGO, BOSTON, NEW ORLEANS, NEW YORK, PHILADELPHIA, PITTSBURGH, KANSAS CITY, NEWARK, DALLAS, DETROIT, AND WASHINGTON, DC. IN FACT, 33 PERCENT OF ATF'S CRIMINAL ARSON CASES ARE INITIATED BY THE TASK FORCES.

EACH TASK FORCE IS UNIQUE IN CONFIGURATION, REFLECTING SUCH VARYING FACTORS AS ENVIRONMENT, MANPOWER, AND MANAGEMENT TECHNIQUES. THE TYPICAL TASK FORCE IS COMPRISED OF ATF SPECIAL AGENTS AND ARSON INVESTIGATORS FROM STATE AND LOCAL POLICE AND/OR FIRE SERVICES

AGENCIES. IN ADDITION, THE U.S. ATTORNEY'S OFFICE AND THE LOCAL PROSECUTOR ARE INCLUDED FROM THE OUTSET AND ARE AVAILABLE TO THE TASK FORCE DURING EACH STEP OF THE INVESTIGATION.

ADDITIONALLY, A NUMBER OF SPECIAL AGENTS FROM THROUGHOUT THE COUNTRY HAVE BEEN SELECTED TO SERVE ON ATF'S NATIONAL RESPONSE TEAM (NRT). THE NRT IS OFTEN CALLED UPON TO RESPOND TO THE SCENE OF ABORTION CLINIC INCIDENTS TO ASSIST WITH CRIME SCENE INVESTIGATIONS. THE NRT HAS BEEN SUCCESSFULLY EMPLOYED TO INTENSIVELY EXAMINE THESE TYPES OF CRIME SCENES AS SOON AS POSSIBLE AFTER THE OCCURRENCE OF AN INCIDENT.

THIS RESPONSE CAPABILITY CONSISTS OF FOUR TEAMS BASED IN THE NORTHEAST, MIDWEST, SOUTHEAST, AND WESTERN SECTIONS OF THE UNITED STATES. EACH TEAM CAN RESPOND WITHIN 24 HOURS TO ASSIST STATE AND LOCAL LAW ENFORCEMENT AND FIRE SERVICE PERSONNEL IN ONSITE INVESTIGATIONS. THIS SPECIALIZED CONCEPT IS THE ONLY ONE OF ITS KIND OFFERED BY A FEDERAL LAW ENFORCEMENT AGENCY. THE EFFECTIVENESS OF THIS CONCEPT AND THE EXPERTISE OF TEAM MEMBERS WERE MOST EVIDENT IN THE RESPONSE TO THE WORLD TRADE CENTER BOMBING.

EACH TEAM IS COMPOSED OF VETERAN SPECIAL AGENTS HAVING

POSTBLAST AND FIRE CAUSE AND ORIGIN EXPERTISE, FORENSIC CHEMISTS, AND EXPLOSIVES TECHNOLOGY EXPERTS. THE TEAM WORKS ALONGSIDE FEDERAL, STATE, AND LOCAL OFFICERS IN RECONSTRUCTING THE SCENE, IDENTIFYING THE ORIGIN OF THE FIRE, CONDUCTING INTERVIEWS, AND SIFTING THROUGH DEBRIS TO OBTAIN EVIDENCE. AT THE DISPOSAL OF THE TEAMS ARE 32 FULLY-EQUIPPED RESPONSE VEHICLES STRATEGICALLY LOCATED THROUGHOUT THE UNITED STATES.

ACCELERANT-DETECTING CANINES HAVE ALSO PROVED TO BE AN INVALUABLE TOOL TO ARSON INVESTIGATORS. THESE CANINES ARE A PRODUCT OF A JOINT ATF/CONNECTICUT STATE POLICE TRAINING INITIATIVE THAT RESULTED IN THE DEVELOPMENT AND STANDARDIZATION OF METHODOLOGIES TO HONE THE ACCELERANT IDENTIFICATION/DISCRIMINATION CAPABILITIES OF CANINES. THE ACCELERANT-DETECTING CANINES, 36 OF WHICH HAVE BEEN TRAINED, ARE PLACED WITH STATE AND

LOCAL AGENCIES TO SUPPORT THEIR ARSON INVESTIGATION ACTIVITIES. THESE CANINES MAY ALSO BE CALLED UPON TO SUPPORT THE EFFORTS OF THE NRT. OVER THE NEXT 2 1/2 YEARS, AN ADDITIONAL 30 CANINES ARE TO BE TRAINED.

CRIMINAL INVESTIGATIVE ANALYSIS IS ANOTHER TECHNIQUE USED BY ATF IN FURTHERANCE OF OUR ENFORCEMENT INITIATIVES AGAINST ABORTION CLINIC VIOLENCE. ATF AGENTS ASSIGNED TO THE FBI'S NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME (NCAVC) ARE TRAINED IN THE TECHNIQUES OF PREPARING ANALYSES ON SERIAL ARSONISTS AND BOMBERS TO ASSIST LAW ENFORCEMENT IN IDENTIFYING POSSIBLE SUSPECTS BASED ON CHARACTERISTICS PARTICULAR TO INCIDENTS. RELATED CONCEPTS OF THESE ANALYSES CAN ALSO BE SUCCESSFULLY APPLIED TO OTHER AREAS SUCH AS INVESTIGATIVE AND PROSECUTORIAL STRATEGIES, AND SUSPECT INTERVIEWING TECHNIQUES. CURRENTLY, A MAJOR PROPORTION OF ARSON CASES SUBMITTED TO THE NCAVC ARE BEING COMPLETED BY ATF.

THE INITIATIVE THAT HAS PUT ATF TO THE FOREFRONT OF ARSON INVESTIGATION IS ITS CERTIFIED FIRE INVESTIGATOR (CFI) PROGRAM. THROUGH THIS PROGRAM, ATF PROVIDES EXPERIENCE, TRAINING, AND EDUCATION TO SELECTED SPECIAL AGENTS TO ENABLE THEM TO DETERMINE FIRE CAUSE AND PRESENT THEIR FINDINGS AND OPINIONS IN COURT IN A CREDIBLE MANNER.

TODAY, THERE ARE 48 CFI'S STATIONED THROUGHOUT THE UNITED STATES. PRESENTLY, AN ADDITIONAL 15 SPECIAL AGENTS ARE IN THE CFI TRAINING PROGRAM. IN 1993, THESE MEN AND WOMEN PARTICIPATED IN APPROXIMATELY 1,700 FIRE SCENE EXAMINATIONS INVOLVING 127 FATALITIES, 374 INJURIES, AND \$317 MILLION IN DAMAGES. THE VAST MAJORITY OF THESE INCIDENTS WERE EXAMINED IN RESPONSE

TO REQUESTS FOR ASSISTANCE FROM STATE AND LOCAL AUTHORITIES.

THEIR EXPERTISE NOW ACKNOWLEDGED, THE CFI'S HAVE INCREASINGLY BEEN REQUESTED TO ASSIST IN FIREGROUND INVESTIGATIONS, SERVE AS CONSULTANTS FOR CRIMINAL PROSECUTIONS, OR ACT AS INSTRUCTORS. THE CFI'S HAVE RESPONDED AS REQUESTED TO ASSIST LAW ENFORCEMENT IN THE AFTERMATH OF THE LOS ANGELES RIOTS, AS WELL AS TO PARTICIPATE IN MANY ARSON TASK FORCE OPERATIONS ACROSS THE COUNTRY.

ATF'S ACCOMPLISHMENTS IN THIS AREA NOTWITHSTANDING, THE CFI PROGRAM WOULD NOT BE WHAT IT IS WITHOUT THE TRAINING AND KNOWLEDGE DERIVED FROM ATF'S STATE AND LOCAL COUNTERPARTS. ATF SEEKS TO COMBINE THIS KNOWLEDGE WITH THAT OF THE SCIENTIFIC AND EDUCATIONAL COMMUNITIES, AND ULTIMATELY SHARE WHAT IS LEARNED THOUGH TRAINING AND CONTINUED CLOSE WORKING RELATIONSHIPS.

EXPERIENCE HAS SHOWN THAT IN THOSE CASES INVOLVING CONCURRENT JURISDICTION, A JOINT EFFORT ENSURES THE MOST COMPREHENSIVE AND EFFECTIVE INVESTIGATION. THE CORNERSTONE UPON WHICH ATF HAS ANCHORED ITS EXPLOSIVES ENFORCEMENT EFFORTS IS THAT OF COOPERATION.

ON JANUARY 24, 1994, A MEETING WAS HELD WITH FBI OFFICIALS TO DISCUSS OUR COOPERATION IN THE VIOLENCE AGAINST ABORTION CLINICS. AT THAT TIME, IT WAS AGREED THAT ATF AND THE FBI WOULD INITIATE A JOINT TASK FORCE TO ADDRESS THIS ISSUE. THROUGH THIS TASK FORCE APPROACH, ATF WILL SHARE THE RESULTS OF OUR INVESTIGATIVE EFFORTS, INCLUDING COPIES OF REPORTS, WITNESS STATEMENTS, REPORTS OF INTERVIEWS, AND OTHER RELATED DOCUMENTS. THE FBI ALSO AGREES TO PROVIDE COPIES OF ALL REPORTS STEMMING FROM THEIR INVESTIGATIVE EFFORTS RELATING TO ABORTION CLINIC VIOLENCE. IN ADDITION, OUR SPECIAL AGENTS WILL CONDUCT INVESTIGATIONS WITH THE GOAL BEING TO PERFECT THE BEST PROSECUTABLE CASES IN THE FEDERAL COURTS.

THE THREAT POSED BY THE CRIMINAL USE OF EXPLOSIVES AND FIRE WILL NEVER BE COMPLETELY ELIMINATED. HOWEVER, THE THREAT CAN BE LESSENED BY LAW ENFORCEMENT ON THE FEDERAL, STATE, AND LOCAL LEVEL WORKING TOGETHER. IT IS IMPORTANT THAT WE NOTE, HOWEVER, THAT AS SUBSTANTIAL AS OUR COMMITMENT IN INVESTIGATIVE SUPPORT RESOURCES HAS BEEN, THEY HAVE BEEN AUGMENTED IN EVERY INSTANCE BY OUR STATE AND LOCAL PEERS. THEY HAVE PLAYED A VITAL ROLE NOT ONLY OVER INVESTIGATIONS, BUT HAVE ALSO HAD TO BEAR THE BURDEN FOR RESPONDING TO THE NUMEROUS ANTI-

ABORTION THREATS AND INCIDENTS OF VANDALISM AND HARASSMENT. UNTIL THE PASSAGE OF THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1994, THESE TYPES OF CRIMES WERE NOT IN THE JURISDICTION OF THE FEDERAL AGENCIES. MANY OF THOSE OFFICERS WHO WORKED WITH US HAVE BEEN TRAINED BY ATF IN ARSON AND EXPLOSIVES INVESTIGATION, AND WE WELL KNOW THEIR PROFESSIONALISM AND SKILL.

ATF HAS ALSO BEEN LONG COMMITTED TO PROMOTING AN ADVANCED LEVEL OF EXPERTISE THROUGH TRAINING PROGRAMS DESIGNED TO FOSTER INTERAGENCY COOPERATION AND ENHANCE LAW ENFORCEMENT'S INVESTIGATIVE CAPABILITIES.

IN ADDITION TO ALL OF THE ASSETS THAT ATF HAS ACCRUED IN ITS EFFORTS TO INVESTIGATE ABORTION CLINIC VIOLENCE, ATF ENJOYS A HARD EARNED AND WELL-RESPECTED REPUTATION FOR COOPERATION AMONG THE NATION'S STATE AND LOCAL AGENCIES THAT ARE ALSO CHARGED WITH THE ENFORCEMENT OF ARSON AND BOMBING STATUTES.

ATF HAS DEVELOPED A COMPREHENSIVE PROGRAM TO COMBAT BOMBINGS AND ARSONS. IN THE LAST 10 YEARS, ATF HAS DEVELOPED AND IMPLEMENTED A NUMBER OF INNOVATIVE TRAINING PROGRAMS. THESE PROGRAMS ARE CONTINUALLY MONITORED AND UPDATED AS PRACTICAL AND AS SCIENTIFIC KNOWLEDGE DICTATES. TO DATE, OVER 2,000 STATE AND

LOCAL LAW ENFORCEMENT OFFICERS, FIRE INVESTIGATORS, INSURANCE INDUSTRY PERSONNEL, AND FEDERAL AND STATE PROSECUTORS HAVE ATTENDED THESE TRAINING PROGRAMS. THE TRAINING CONCENTRATES ON INVESTIGATIVE TECHNIQUES THROUGH WORKSHOPS AND ON-THE-SCENE TRAINING. ATF'S FORENSIC CHEMISTS ALSO PROVIDE TRAINING FOR STATE AND LOCAL CHEMISTS IN ARSON ACCELERANT DETECTION.

ADDITIONAL PROGRAMS HAVE BEEN DEVELOPED BY ATF TO PROVIDE SPECIALIZED SUPPORT TO ITS COUNTERPARTS ON THE FEDERAL, STATE, AND LOCAL LEVELS INVOLVED WITH ABORTION CLINIC VIOLENCE. ONE SUCH PROGRAM IS THE EXPLOSIVES INCIDENTS SYSTEM (EXIS), A COMPREHENSIVE COMPUTERIZED SOURCE OF INFORMATION PERTINENT TO ARSON AND EXPLOSIVES INCIDENTS NATIONWIDE. DEVELOPED IN 1975, EXIS CAN BE USED TO MATCH TARGETS AND MOTIVE OF BOTH TYPES OF CRIMES AS WELL AS COMPARING SIMILAR EXPLOSIVE DEVICES, AND CAN SHOW TRENDS OR PATTERNS IN A GIVEN AREA, STATE, OR THROUGHOUT THE NATION. EXIS CURRENTLY CONTAINS 194,058 DETAILED RECORDS FROM 56,357 ARSON AND EXPLOSIVES RELATED INVESTIGATIONS. EXIS IS ALSO ATF'S REPOSITORY FOR INFORMATION REGARDING THEFTS, LOSSES, RECOVERIES, AND SEIZURES OF EXPLOSIVE MATERIALS NATIONWIDE.

ATF'S SPECIALIZED TRAINING PROGRAMS ARE NOT LIMITED TO

LAW ENFORCEMENT. WE HAVE LONG RECOGNIZED A NEED FOR THE GENERAL PUBLIC TO BE EDUCATED IN AND HAVE A PRACTICAL UNDERSTANDING OF HOW TO PREPARE FOR AND REACT TO SUSPECT PACKAGES, BOMB THREATS, AND BOMBINGS.

WE HAVE TRIED NOT TO JUST RESPOND AFTER AN INCIDENT HAS OCCURRED BUT TO BE PROACTIVE. WE HAVE WORKED CLOSELY WITH NATIONAL GROUPS AND CLINICS AROUND THE COUNTRY AND ADVISED THEM OF VARIOUS SECURITY MEASURES THAT THEY MIGHT TAKE. WE HAVE ALSO DONE VULNERABILITY ASSESSMENT STUDIES OF NUMEROUS ABORTION CLINICS AND PROVIDED THE INFORMATION TO THEM.

PROPER EDUCATION, TRAINING, AND PREPARATION BY THE PRIVATE SECTOR CAN MAXIMIZE PERSONAL SAFETY AND MINIMIZE PROPERTY DAMAGE. TO THIS END, ATF REGULARLY CONDUCTS SEMINARS ON BOMB THREAT MANAGEMENT AND PHYSICAL SECURITY PLANNING, AS WELL AS ON THE IDENTIFICATION OF SUSPECT PACKAGES AND MAILED BOMBS. ATF HAS ALSO WORKED CLOSELY WITH THE NATIONAL ABORTION FEDERATION (NAF) AND PLANNED PARENTHOOD FEDERATION OF AMERICA (PPFA) IN AN EFFORT TO INFORM AND EDUCATE ABORTION PROVIDERS IN SECURITY AND PROTECTION PROCEDURES AS THEY RELATE TO ARSON AND BOMB THREATS. THIS CLOSE WORKING RELATIONSHIP IS EVIDENCED BY THE RECENT ABORTION CLINIC ARSON IN FALLS CHURCH, VIRGINIA.

A \$100,000 REWARD IS BEING OFFERED FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF THE PERSON(S) RESPONSIBLE FOR THE ARSON.

THE REWARD IS BEING OFFERED BY PPFA AND THE NAF. ATF HAS SET UP A NATIONAL TOLL FREE HOTLINE TO RECEIVE INFORMATION RELATIVE TO THIS INCIDENT AND ANY PAST OR PLANNED ACTS OF VIOLENCE. THE TOLL FREE NUMBER, 1-800-ATF-4867, IS AVAILABLE 24 HOURS A DAY, 7 DAYS A WEEK. ATF IS COMMITTED TO BRINGING THE FULL FORCE OF ITS ENFORCEMENT AUTHORITY TO BEAR AGAINST THOSE WHO PERPETRATE THESE CRIMES.

TYPICALLY, PERSONS WHO ARE RESPONSIBLE FOR ABORTION CLINIC ARSONS AND BOMBINGS ARE INDIVIDUALS WHO ARE WILLING TO EXPRESS THEIR MORAL OPPOSITION TO ABORTION VIA A VIOLENT AND ILLEGAL ACT. BASED ON PAST APPREHENSIONS, MOST OF THESE INDIVIDUALS DO NOT HAVE A CRIMINAL BACKGROUND. IT APPEARS THAT THEIR GOAL IS THE DISRUPTION OF THE ABORTION PROVIDER'S SERVICE RATHER THAN ANY PERSONAL GAIN OR NEED FOR RECOGNITION. IT IS OBVIOUS THAT THE PERPETRATORS ARE AMONG THOSE WHO ARE MORALLY OPPOSED TO ABORTION. HOWEVER, IT SHOULD BE RECOGNIZED THAT A MAJORITY OF PERSONS WITHIN THE ANTI-ABORTION MOVEMENT NEITHER PARTICIPATE IN NOR CONDONE THESE ACTS OF VIOLENCE. CARE HAS TO BE TAKEN NOT TO

BREACH THE RIGHTS OF THOSE LAWFULLY INVOLVED IN DISSENT, WHILE PURSUING OTHERS WHO BEAR CRIMINAL RESPONSIBILITY.

ATF HAS MADE GREAT STRIDES IN ATTACKING THE CRIMINAL USE OF EXPLOSIVES AND FIRE AGAINST ABORTION PROVIDERS. WE CANNOT GUARANTEE THAT FUTURE ATTACKS AGAINST CLINICS WILL NOT OCCUR AS LONG AS CERTAIN PEOPLE ARE DETERMINED TO USE VIOLENCE. HOWEVER, WE CAN ENSURE THAT THESE INDIVIDUALS WILL BE ARRESTED AND PROSECUTED TO THE FULLEST EXTENT OF THE LAW. WE BELIEVE THAT SUCCESSFUL PROSECUTION AND LENGTHY SENTENCES GIVEN BY THE COURTS ARE THE BEST DETERRENT AGAINST THOSE INDIVIDUALS WHO ESPOUSE VIOLENCE. WHILE WE HOPE THAT THIS ACTIVITY WILL ABATE AS THE MESSAGE OF SURE APPREHENSION AND PUNISHMENT SPREADS, WE ARE PREPARED TO CONTINUE OUR EFFORTS TO MEET ANY NEW OUTBREAKS WITH THE SKILLS AND RESOURCES WE HAVE BROUGHT TO BEAR ON THIS PROBLEM TO DATE.

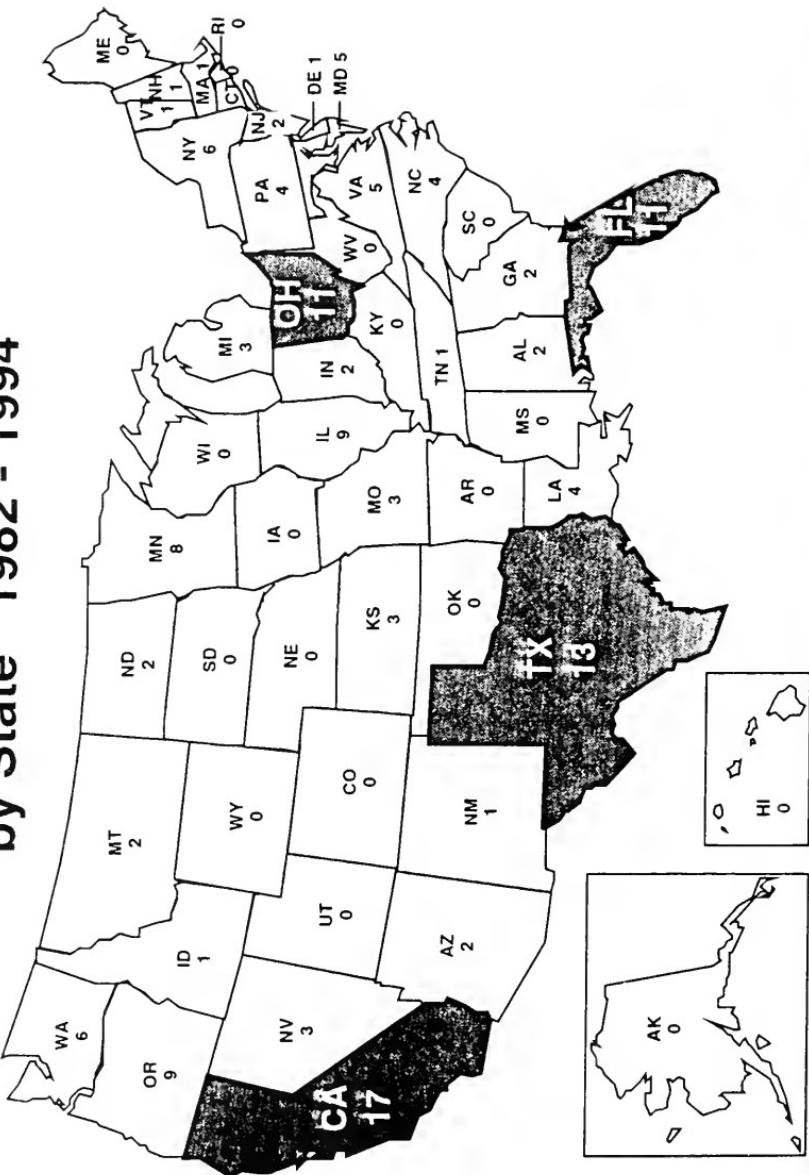
ATF IS COMMITTED TO FULFILLING ITS CONGRESSIONAL MANDATE TO PROVIDE THE MOST EFFECTIVE AND PROFESSIONAL INVESTIGATIVE RESPONSE AVAILABLE TO ARSON AND EXPLOSIVES INCIDENTS. THE SUCCESS ATF HAS ACHIEVED COULD NOT HAVE BEEN ACCOMPLISHED WITHOUT THE CLOSE WORKING RELATIONSHIPS AND COOPERATIVE ENVIRONMENT THAT

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Mr. SCHUMER. I guess the thrust of my questions are directed to one issue, and that is since FACE has been signed we still see a level of violence of a variety of sorts directed against clinics. In response to some, there has been Federal action; in response to many, there has not. I am trying to determine why there has not been action in the others, what kind of guidelines ought to be set, et cetera.

My first question relates to what happened this summer when antiabortionists took part in blockades in Little Rock, AR, Milwaukee, WI, and in Dobbs Ferry, NY. FACE was enacted to deal with these types of situations and, in fact, Operation Rescue stated that the Little Rock blockades were designed to oppose FACE.

Arrests were made at all of the three blockade sites, and Planned Parenthood has specifically asked the U.S. attorneys offices in Little Rock and Milwaukee to consider filing FACE charges. The Federal Government chose to file FACE charges only in Milwaukee and, therefore, Planned Parenthood filed civil actions under FACE in Milwaukee, Little Rock. In New York, the attorney general of New York State filed a FACE action.

My first question is, what distinguished Milwaukee to the extent that the Department chose to file FACE charges there but not in Little Rock or Dobbs Ferry?

Ms. HARRIS. I certainly am here to answer any questions with respect to the task force, but I think we will find that it is more appropriate for Mr. Patrick to address questions relating specifically to these things.

Mr. SCHUMER. In whatever way you two choose to divide it up is fine with me.

Mr. PATRICK. She is punting. No, I am kidding.

As you know, Mr. Chairman, we cannot talk about matters or specific instances that may or may not be under investigation. The Federal action that you have seen has been—and that the public has seen—has been in Milwaukee where the Federal indictments came forward. That is not to suggest that there has not been or does not continue to be Federal action in the other cases as well.

I think what I would point out is that we have several matters under active investigation and that, for all of them on both the criminal and the civil side, the determinations about what action to take and when to take that action is made on a case-by-case basis and is guided by several factors I can lay out for you.

Mr. SCHUMER. Please do.

Mr. PATRICK. And they have to do with the strength of the evidence in the given case, considerations about the relative State and Federal interest, the extent to which the State has or has not taken some action to address the issue, where the surest and swiftest and most effective punishment may lie, and then complicating factors, such as whether State law precludes a State prosecution that the State is interested in if a Federal action goes first.

And then I want to remind that we have very much in mind the first amendment in all of these matters. So we are considering the extent to which the violations are in relative terms more serious in some places than others.

Mr. SCHUMER. Can you comment?

Mr. SENSENBRENNER. Will the gentleman yield at this point?

Mr. SCHUMER. I will be happy to yield for a minute.

Mr. SENSENBRENNER. This question fits into the question that the chairman asked, and that is why I am asking it at this point.

In Milwaukee, the elected district attorney of Milwaukee County, who is not a member of my political party, long before abortion clinic demonstrations took place, issued written guidelines that said that his office would prosecute, on State criminal charges, picket line and demonstration violence only when an injury or a death or another type of crime such as an arson occurred. And mere blockading would not be prosecuted by his office. That would be prosecuted as a municipal ordinance violation by the city attorney's office where the maximum penalty would be a fine.

Now, are you saying, Mr. Patrick, in answer to Mr. Schumer's question, that Milwaukee was selected for prosecution of—criminal FACE prosecution in the country because of the guidelines of the district attorney of Milwaukee County in not issuing State criminal charges when there was no injury that occurred?

Mr. PATRICK. I don't think that is what I said or that is what I am saying, Congressman. What I am saying is that Milwaukee was selected considering the factors that I outlined—all of the factors that I outlined, and that is the approach we take to all of the incidents that are brought—or each of the incidents brought to our attention.

Mr. SCHUMER.

It seems to me there is nothing wrong with a State either refusing to prosecute under its own law or, if it does not have a law, for the Federal Government to be more active in those States than in a State that will be active if a Federal right is being—

Mr. SCHIFF. If the chairman would—

Mr. SCHUMER. First, I would like to get an answer to that question.

Mr. PATRICK. I am simply saying, Mr. Chairman, that no one factor is determinant, necessarily, in any case.

Mr. SCHUMER. I don't want to step on any ongoing investigation, but these three cases were rather similar to the outside observer in terms of what happened. People have asked me, as author of the bill—and this is out of my domain and that is why I am asking you—why in one case the Government went forward and in the other it did not. Were the factors related to the strength of the evidence? I can understand if you do not have witnesses that will come forward. Was an effort made in all three?

Mr. PATRICK. Oh, yes. Oh, yes.

Mr. SCHUMER. OK. And there may be ongoing investigations in some of those.

Mr. PATRICK. That is right, Mr. Chairman. You know the long-standing policy of the Department is not to confirm or deny the existence of an ongoing investigation.

Mr. SCHUMER. Right. That is why I said maybe.

Mr. SCHIFF. Would the chairman yield for one point?

Mr. SCHUMER. I would be glad to yield.

Mr. SCHIFF. I thank the chairman for yielding.

I want to point out one issue right here. Ms. Harris used the words violent and violence time after time in her testimony before us. The investigation or the prosecution in Milwaukee that you

have referred to, Mr. Patrick, or any other prosecution that has taken place but particularly in Milwaukee, were these people accused of violent lawbreaking?

Mr. PATRICK. In the Milwaukee case, there was an obstruction that effectively shut down the clinic, but the response to your question may require some clarification about how we have divided up the testimony today.

My colleague was discussing the focus of the task force, which is not responsible for every FACE prosecution but for those prosecutions where there is some reason to believe, a substantial basis in fact to believe, that the criminal activity may be connected to other criminal activity in other reproductive health clinics.

There are then prosecutions that do not necessarily present or do not immediately present those kinds of considerations, and they have been dealt with independently.

Mr. SCHIFF. If I may just go a little farther on this.

Mr. SCHUMER. Please.

Mr. SCHIFF. The two of you do work for the same Department of Justice.

Mr. PATRICK. Yes.

Mr. SCHIFF. So when Ms. Harris testifies about her emphasis is to prosecute violence and threats of violence dealing with abortion clinics, in this context you are saying Ms. Harris is not testifying on behalf of the entire Department of Justice because other portions of the Department of Justice may be choosing to give priority to cases which may violate the law in a civil disobedience fashion but which are not violent, is that right?

Mr. PATRICK. No. What you need to understand, Congressman, is that we are working very much in coordination with each other. The task force is concerning itself with violence that—violent acts that may be connected to each other. All of the matters, all of the complaints of which we are made aware are filtered through, if you will, the task force, and then they may be handled differently depending on an initial pass that the task force takes into account.

But, as you know, under FACE, there are also criminal and civil provisions for obstructions which may not be violent but which are also a violation of existing law.

Mr. SCHUMER. Reclaiming my time, if there is a blockade and there is no adequate State action, I take it that incident would still be high on your agenda in terms of using the FACE act to make sure that blockade ended?

Mr. PATRICK. That is certainly a case worth exploring.

Mr. SCHUMER. We are going to have a vote in 10 minutes, and I have more questions, more than 10 minutes' worth of questions, but I will ask a few more and then we will break.

While we are on that subject, under what circumstance would the Department seek to file charges—and I am not asking about a specific case—as a result of blockading clinics? What would be the standard you look for? Ms. Harris or Mr. Patrick.

Ms. HARRIS. If Mr. Patrick would yield for just a second.

Mr. SCHUMER. We are getting quite legislative.

Ms. HARRIS. I just want to state as strongly as I can state that there is one Department of Justice and the Department of Justice

has various divisions which are working very well together. We have very different emphases here.

Mr. SCHUMER. There is nothing wrong with specialization. Some parts of the Department of Justice might be assigned to one thing and some another. As long as you coordinate, that may be the most efficient way to do things. There is not a problem.

Ms. HARRIS. Certainly.

Mr. SCHUMER. Mr. Patrick.

Mr. PATRICK. Well, here, again, the factors for considering the obstruction cases are like the factors for considering the violence cases: the strength of the evidence, the relative State and Federal interest, the existence—and when I say State and Federal interests I don't mean just in the abstract but the practical interests—the State's interest in proceeding with the matter and dealing with the matter, and complicating factors that may exist as well as first amendment considerations.

I think it has been very, very important to us that the early obstruction cases be cases that will survive a first amendment challenge, and that the obstruction be significant enough—that is not to say that even a brief obstruction is not meaningful to those who are affected—but significant enough to make a compelling case in court.

Mr. SCHUMER. Let me ask you this. When conduct occurs that might amount to a violation of FACE, where will the decision to proceed with FACE charges be made? In Washington or locally in the District where the conduct occurred?

Mr. PATRICK. That is very much in consultation with the U.S. attorneys. We have, at least on the criminal side, the right of prior approval here in Washington. On the civil side, we have been working very much in lock step with the U.S. attorneys offices.

Mr. SCHUMER. I understand that today only two criminal FACE charges have been filed, one in Milwaukee, which we just referred to, and the other against the infamous Mr. Paul Hill. Have there been so few charges filed because there have not been many criminal FACE violations? Is it because the Department is determined that other violations are better handled by State government? Is it a lack of resources?

The question that many of us who passed FACE are asking—and not condemning at this point, but asking—is with all the violence continuing why have we not seen more results at this point in time? I realize it has only been 6 months since the bill is passed, but these are life-and-death issues.

Mr. PATRICK. The question is a fair one, Mr. Chairman. All I can say, without getting into the specifics of any one case or of ongoing investigations, is that we have been making a determination in every case not necessarily whether to proceed or not for all time, but whether it is the right time to proceed because of the ongoing investigation which my colleague has referred to in connection with the task force.

Mr. SCHUMER. Let me ask you two other questions. Do you have the resources to proceed in all the cases where you need to right now or have some cases been dropped, even if there is not enough State action, because you do not have enough attorneys?

Mr. PATRICK. Well, so far. I am reluctant ever to say to legislators that we have all the resources we need for what we want to do.

Mr. SCHUMER. Everyone who comes before us is reluctant to say the opposite. They do not want to say we have enough, and they don't want to say we do not have enough.

Mr. PATRICK. Well, we could use more, but I think we are making pretty creative use of what we have. And one of the things that has helped is the enormous amount of cooperation within the Department. General Harris is exactly right. We are one Department and with two investigating agencies as well.

Mr. SCHUMER. There have been two criminal charges filed within these 6 months. If the rate of violence continues in the next 6 months at the rate it was in the last, would it be fair to say we are going to find a more than doubling of the number of charges filed?

Mr. PATRICK. Well, I will not make a promise—

Mr. SCHUMER. I don't want a promise. I want a guesstimate. If given the level of violence and blockading that is occurring now, if four criminal charges were filed throughout the country over the next 3 or 4 years, I would find that too little has been done.

Mr. PATRICK. I think you are getting—

Mr. SCHUMER. I am trying to determine whether only two charges have been filed because of startup or whether two is the rate we are going to continue to be going.

Mr. PATRICK. Mr. Chairman, I think if that were the case going forward you would get agreement from me that not enough had been done.

Mr. SCHUMER. OK. I understand that—

Oh, let me ask this. There have been some rumors, that the U.S. marshals in Mississippi have been told to use FACE to intervene in a situation only if there is an imminent risk of death. Is that accurate?

Mr. PATRICK. Do you want to take that?

Ms. HARRIS. In terms of the efforts of the Department of Justice and the Marshals Service to attempt to, on a temporary basis, assure or attempt to assure that no violence will occur, the marshals are making judgments daily, with respect to the level of our—

Mr. SCHUMER. But let us take a case where there is constant harassment that edges over the line in terms of the FACE act—not peaceful protest but way beyond that; but let's say that there is not an imminent risk of death. Would marshals be prohibited from being involved? Would you not urge marshals to be involved, provided the State was unwilling to do anything?

Ms. HARRIS. Again, I want to be very clear with respect to the role of the marshals. It is not an ongoing role. This is not going to go on forever. We brought the marshals in to provide temporary protection to clinics and providers in the wake of a very violent and an egregious violation of Federal law and, I must say, in light of additional threats of violence that were received.

In cases involving a clear and present threat of violence—

Mr. SCHUMER. Violence that is different than of death.

Ms. HARRIS [continuing]. Violence, including loss of life, we—

Mr. SCHUMER. So if there were constant threats, for instance—and I don't want to dispute whether marshals do this or FBI agents or whoever else you assign. I am looking for Federal enforcement authority. But if a clinic received numerous threats and you had reason to believe that those threats were credible—that when the clinic is closed at night we are going to blow it up—there would be no barrier to Federal officers—marshals, FBI agents or personnel—protecting that clinic if the State were unwilling or unable to.

Ms. HARRIS. There is certainly no legal barrier. We are attempting to make judgments on a case-by-case basis.

Mr. SCHUMER. Would there be any procedural Department barrier or any other kind of barrier? I know there is no legal barrier or I would not ask the question.

Ms. HARRIS. No. Clearly and very publicly we have said that we are making these judgments on a case-by-case basis.

Mr. SCHUMER. Well, I have a second group of questions here, but I think this is probably an opportune time for us to break for a vote. I will try to return as shortly as I can. Let's say we will resume at quarter to 12.

[Recess.]

MR. SCHUMER. We will resume the questioning.

My next question deals with the Fort Wayne Clinic. Susan Hill will be here a little later, and I understand that in some jurisdictions like in Fort Wayne, for instance, there has been confusion as to which law enforcement agency has the authority and responsibility to make an arrest when FACE violations occur.

Susan Hill, who operates a clinic in Fort Wayne, will testify later this morning that the U.S. attorney in Fort Wayne told her that he had no authority to enforce the Federal injunction creating a buffer zone.

Ms. Hill will also testify that the U.S. marshals refused to come near the clinic and, additionally, that the local police refused to make arrests.

In addition, deputy U.S. attorneys told Ms. Hill that unless there are extremely violent circumstance at her clinic, U.S. attorneys would not get involved. In fact, one assistant U.S. attorney advised the clinic to move and operate at a secret address, which would be somewhat counterproductive. One of the goals of this hearing is to avoid things like that occurring again.

My first point is to bring that to your attention; second, I would like to ask, when a clinic operator like Ms. Hill faces such recalcitrance by law enforcement agencies, what should she do? Who should she call? And why were the U.S. attorneys, which are part of this one big Justice Department of how many employees telling her such things? When they tell her to go move and find a secret access, it gets a little exasperating and probably insulting.

Mr. PATRICK. To say nothing of outside the scope of the U.S. attorneys' instructions.

Mr. SCHUMER. Nor to comment on the intelligence of these people.

Ms. HARRIS. Or the—

Mr. PATRICK. Or the ones we have sent directives, Mr. Chairman, to be given the day following the passage of the act, and again in

June to the U.S. attorneys explaining to them their responsibilities under FACE and further explaining to them what it is the task force and the Department generally will be undertaking under FACE. And I guess I would urge—is it Ms. Hill?

Mr. SCHUMER. Ms. Hill, yes.

Mr. PATRICK [continuing]. And anyone else who has that type of experience with any of the U.S. attorneys to pick up the phone and call me. I am at 202-514-2151.

Mr. SENSENBRENNER. Would you repeat that, please?

Mr. PATRICK. I look forward to your call, Mr. Sensenbrenner.

Mr. SCHUMER. I don't believe Mr. Sensenbrenner is going to open up an abortion clinic.

Mr. PATRICK. One of my deputies, Kerry Scanlan, is responsible for oversight of the Criminal Section of the Civil Rights Division. And if the caller is unable to reach me they should ask for Mr. Scanlan.

Mr. SCHUMER. I appreciate your letting people who are clinic operators know they can get right to the top quickly if there is some problem or confusion. That is very helpful.

When a FACE violation occurs, who should make the arrest? Should it be U.S. marshals or local police officers? Will there be some guidelines about that?

Mr. PATRICK. Well, apart from—

Mr. SCHUMER. Formal or informal. I am not asking about written guidelines.

Mr. PATRICK. Right. Well, I think that question follows from whether the determination has been made that there will be a Federal prosecution and following the factors that we outlined before the break. So when we have decided that this is a matter in which the Federal authorities should proceed, the marshals could make the arrest. But we have had very good cooperation in a number of jurisdictions with the State authorities, and that may also be simply resource driven.

Mr. SCHUMER. Well, what happens in the case—and I don't know if any have arisen, Mr. Patrick—where there is an immediate situation, an arrest, a preindictment arrest, which occurs occasionally—

Mr. PATRICK. Sure.

Mr. SCHUMER [continuing]. And local law enforcement is somewhat skittish, let's say. It is not absolute. They are not going to do anything. I don't want to get into a you-go-first, you-go-first situation all the time. Have you had any experience with those situations? Is it necessary, do you think—and you do not have to answer it here—to issue some written guidelines to all of the marshals and U.S. attorneys about how to deal with these kinds of situations?

Mr. PATRICK. It may be that—frankly, I cannot answer your question, Mr. Chairman. I am not aware of situations of that kind.

Mr. SCHUMER. I would ask you to think about it. Maybe they have not come up at this point.

Have you had any other reports such as the one Ms. Hill will give us on difficulties at the regional or local level in terms of understanding the awareness and willingness to use FACE?

Mr. PATRICK. Any other inquiries from the State authorities? Excuse me.

Mr. SCHUMER. No, from Federal authorities. Have you had other complaints about U.S. attorneys, assistant U.S. attorneys not really understanding the law and not being too eager to enforce it—giving nice gratuitous advice like Ms. Hill received?

Mr. PATRICK. No, nothing like the kind of incident that you have described.

Now, obviously, there is a sense that some have that the U.S. attorneys, in a given jurisdiction, has not made the right call in determining whether to go forward at that time or some other time.

Mr. SCHUMER. In that situation, I take it, there is recourse to call on your office and somebody can make the case?

Mr. PATRICK. The case can be made. Again, on the question of whether the U.S. attorney made the right call or whether the U.S. attorney should hurry up and make the call, that has to be constrained by our longstanding policy on not commenting about whether a matter is or is not under investigation.

Mr. SCHUMER. There are two situations I have found particularly troubling. I understand that at least one doctor, Dr. Booker, in Jackson, MI, has been directly threatened with death by this Roy McMillan, a man who signed on to the justifiable homicide letter along with Paul Hill. As I mentioned in my opening statement, Mr. McMillan apparently stated that the antiabortion noose was tightening around Dr. Booker's neck.

Since these threats have been made, Dr. Booker has been under 24-hour protection by Federal marshals—which is all to the good—but no FACE violation charges have been filed against Mr. McMillan.

Let me give you the second case, and then you can comment on both.

Later this morning we will also hear from Linda Taggart. She is a nurse and administrator at the Pensacola clinic where Dr. Britton and Mr. Barrett were murdered. Ms. Taggart will testify that over 1 month before the murders Paul Hill tried to prevent patients from entering the Pensacola clinic and that he screamed into the clinic's windows; the former is probably a clear violation, depending on interpretation, of the FACE law; the latter is one of which you want to be mindful. I don't know what screaming into the windows actually entails.

Anyway, Ms. Taggart will tell us that in response to Mr. Hill's actions she telephoned the FBI. The FBI agent came to the clinic to take down the information, but told Ms. Taggart that the FBI could not make an arrest because it had no guidelines. Frustrated, Ms. Taggart then called the Civil Rights Division in Washington. She was told that, although the Division was aware of Mr. Hill's activities, this was not a time to arrest him and that the problem should be handled by the local police.

The question I have is, if not in the Paul Hill case or in the case of Dr. Booker, under what circumstance would this Department seek to file FACE charges in situations where there have been threats of force against or harassment of clinic personnel? And, secondly, under what circumstance does the Department believe that arrests for other FACE violations are appropriate?

Ms. HARRIS. Mr. Chairman, may I respond first?

Mr. SCHUMER. Please.

Ms. HARRIS. I hope that the committee received, because we sent it up, a protective order that the judges entered in the Paul Hill case in Pensacola, and so we feel particularly constrained not to talk about that case in particular or anything that might impact on that case.

Mr. SCHUMER. Even what happened 2 months before?

Ms. HARRIS. I am fearful the judge might regard that as edging into his area.

But, in addition to that and with respect to both of the instances that you have raised, let me just say that we do not and cannot—and I know you understand—make any comments with respect to ongoing matters or, for that matter, to confirm or deny that there are such ongoing matters. So I think that I understand your question—

Mr. SCHUMER. I understand that, Ms. Harris, and I don't want to tread on your rights. I will just say, from my point of view as the author of the law, these were the types of cases and situations for which the FACE law was designed. I will leave it at that.

I may have one or two more other questions, but I have been asking you questions long enough. Let me ask Mr. Sensenbrenner to go ahead.

Mr. SENSENBRENNER. To begin, would either of the representatives of the Justice Department who are here today know if FBI agents and U.S. marshals and other Federal law enforcement officials have received any written guidelines on what the extent of their investigative authority is in this area?

Ms. HARRIS. We are pursuing the task force's work, operating under the principles of Federal prosecution, which are our general guidelines, as to our evaluation and exercise of our discretion.

Mr. SENSENBRENNER. So there are no written guidelines specifically on this issue that the FBI agents and the marshals have received?

Ms. HARRIS. May I proceed?

Mr. SENSENBRENNER. Sure.

Ms. HARRIS. As you know, there are also Attorney General guidelines with respect to criminal investigations that the FBI is constrained by, and, furthermore, this task force investigation is being directed by an attorney who is working directly for me. I assure you that between the principles of Federal prosecution, the attorney general's guidelines and my day-to-day contact on this task force, that very, very clear instructions exist with respect to the scope of the investigation.

Mr. SENSENBRENNER. Well, I am very concerned that, given the well-publicized attitudes of both the President and the Attorney General on the issue of legalized abortion and demonstrations before abortion clinics, that the impression has been received by prolife demonstrators who have absolutely no thought whatsoever of committing an act of violence that they are being painted with a very, very broad brush and are being brought into a Federal investigation that has been triggered by those who will have committed acts of violence.

And let me read out of the New York Times on Thursday, August 4, which was right after the tragedy in Pensacola where Dr. Britton was killed: On Friday, about 5 p.m., less than 10 hours

after the killing of Dr. John B. Britton and his security escort James H. Barrett outside the Pensacola Ladies Center, Ms. Reno spoke with Louis J. Freeh, the FBI Director. Mr. Freeh then set the investigation in motion, said one law enforcement official, who maintained that despite misgivings of some FBI officials the Director has been eager to take on this high-profile inquiry important to the Clinton administration.

Several paragraphs later this article goes on to express the concern of civil service agents who are on the line, that their careers might be placed in jeopardy if at some time in the future an administration was elected by the American people who took the opposite position on the question of abortion. And they refer specifically to the antiwar demonstrations and civil rights demonstrations in the 1960's and 1970's, and specifically with regard to the infiltration of the Committee in Solidarity with the People of El Salvador, CSPES, in the 1980's, which Mr. Edwards and I spent a considerable amount of time in the last decade doing oversight on.

What protection can you give to these FBI agents and U.S. marshals as well as people who are opposed to abortion who want to picket places where abortions take place, are not involved in any conspiracy, and have no intention of committing any crime or engaging in any act of violence that they will not get drawn into a net?

Ms. HARRIS. Let me put it this way, Congressman. I have been a Federal—a career Federal prosecutor for many, many years. I am in charge of this investigation. I believe and I believe it to my core that I have a sacred obligation to perform my duty to protect the rights of all American citizens. And that is not only the right of people to be free of violent activity but the right of people to associate, to express themselves in any way they want to. I just feel this so deeply myself.

And whatever anonymous sources are reported in the New York Times, let me assure you that the Attorney General has directed me and I know what my charge is and my prosecutors know what their charge is, and I must say that the FBI agents who are working with us are very, very sensitive to these issues, as are we. We are walking a straight line. And I just feel so strongly about it. And I assure you that we are looking at these guidelines. We are erring always on the—

Mr. SENSENBRENNER. But, Ms. Harris, can you not see that a prolife, nonviolent demonstrator would be very fearful when he or she will pick up the New York Times and sees that within 10 hours after a tragic murder which has been condemned by all of the leaders in the prolife movement the Attorney General directs the FBI Director to go start an investigation?

Ms. HARRIS. The direction of the Attorney General to me was to establish a task force, including the FBI, including ATF and the marshals, to determine whether there was any organized criminal element that was directing the horrible acts of violence.

I have come here, and as Congressman Schiff has noted and noted well, I have talked about violence. That is what we are talking about in this task force, and that is what we are looking at, specific acts of violence, to see if there are links so that we can pre-

vent, solve, and if we solve them, prosecute and punish criminal people.

Mr. SENSENBRENNER. OK, but were there any acts of violence that came about as a result of the prosecutions in Milwaukee? Were there any acts of violence that caused the prosecutions in Milwaukee or was that all nonviolence such as putting cement in cars and attempting to cement up the entrances of the clinic?

Ms. HARRIS. I maybe should defer to my colleague here.

Mr. PATRICK. I think the answer to that is no. What Jo Ann Harris is referring to is the focus of the task force. What I was referring to earlier is the focus of the law in general. And the focus of the law in general, as you know, is to address force, threats of force or physical obstruction. And the Milwaukee case is a physical obstruction case, a massive obstruction, as a matter of fact, where the clinic was closed down entirely for several hours.

Mr. SENSENBRENNER. Well, it strikes me that one side of the Justice Department is speaking about acts of violence, which all people condemn, and the other side of the Justice Department is talking about prosecutions for nonviolent obstructive acts, which I will concede is a part of the FACE law. I don't think it should be there, but in fact it is the law that has been passed by the Congress and signed by the President.

Now, this gets me back to the point, and that is where is the line drawn on what the extent of Federal law enforcement activity is for the protection of the agents who are engaged in that? Should there be a change of administration at some time in the future which takes the opposite position on this question, and what assurance can the Justice Department give to those prolifers who are expressing their first amendment rights in a nonviolent and nonobstructive manner that the full force of the Justice Department is not going to come down on them?

Mr. PATRICK. Well, I can tell you, and I will tell the American people, that the agents of the Justice Department today are not in some dragnet that draws into it all prolife supporters. We do not care whether you are prolife or prochoice. This is about law enforcement.

And the law says—and, as you indicated, like it or not, it addresses force, threats of force or physical obstructions. We will pursue physical obstructions, and I think in many cases these are the hardest cases.

Mr. SCHUMER. I would be on top of you if you did not try physical obstruction cases because, although those may be the harder cases, that was the original purpose of the law.

Second, let me ask a question to clarify what Mr. Sensenbrenner has been asking, which is a fine line of questioning, as far as I am concerned. I have no problem with it.

Has there ever been, since the FACE law passed, an investigation of somebody who protested—even leaving an investigation open, even the first little gear of investigative apparatus turning—when there was no allegation of either violence or obstruction?

Mr. PATRICK. Not to my knowledge. No.

Ms. HARRIS. No.

Mr. SCHUMER. OK, I yield back.

Mr. SENSENBRENNER. Now, following up on your answer, Mr. Patrick, are you also prosecuting other political groups for blockades, such as Act-Up?

Mr. PATRICK. I am not aware of any Federal statute or any—excuse me, any obligation in the FACE, if that is what you mean.

Mr. SENSENBRENNER. Yes, there is. Senator Hatch and I were successful in including into the FACE law the same penalties for interrupting religious services that are contained for blockading abortion clinics. Are you going after Act-Up as well?

Mr. PATRICK. We are not going after any group, first of all. I will tell you that. I am not aware—well, let me put it this way. As you know, I cannot comment on whether there is or is not an open investigation. There is not today a prosecution, an open prosecution, a filed prosecution, involving blockades to religious—

Mr. SENSENBRENNER. I would remind you in April, Mr. Patrick, right before the FACE law was enacted, there were members of the U.S. Civil Rights Commission who wrote to Attorney General Reno expressing "deep concern about the continuing evidence of disruption by private individuals of religious activity and the vandalism of religious property." And in that letter specifically was mentioned radical homosexual groups like Act-Up who have disrupted services being conducted in Roman Catholic churches. Is the Justice Department doing anything about that?

Mr. PATRICK. As I said a moment ago, Congressman, I can and will not comment on whether or not there are active investigations, but you are quite correct that there are no open filed prosecutions to date that I know of.

Mr. SENSENBRENNER. How about labor union disputes which are in violation of the Hobbs Act?

Mr. PATRICK. I cannot speak to that, Congressman.

Mr. SENSENBRENNER. Well—

Mr. SCHUMER. That comes in yet another Department of the Justice Department?

Mr. SENSENBRENNER. Yes, and all 90,000 employees. Perhaps we should get the Attorney General herself here because she is in charge of all of those departments and maybe she can answer it. You know, I guess the point that I am making is it appears there are different strokes for different folks, and the Justice Department appears to be interested in enforcing the law in a selective manner.

I am waiting for the first prosecution to take place when Act-Up or another group like that starts pelting Cardinal O'Connor with condoms as he is trying to preach a sermon in St. Patrick's cathedral.

I yield back the balance of my time.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

I think the testimony of the Justice Department, the ATF, is really rather first class and comports with the intention of the subcommittee and of Mr. Schumer, the author of the bill, when this very important criminal law was enacted.

Mr. Sensenbrenner did get into an area that has always been of concern to us, and I think your responses are excellent.

We have had unfortunate experiences in our oversight of the FBI where individuals were investigated and damage done to their rep-

utations because they were allegedly connected or related to or talked to someone who was suspected of criminal activity.

Arab-Americans were unnecessarily interviewed and harassed during the Persian Gulf War, and I believe either Mr. Sensenbrenner or Mr. Schumer mentioned CISPES, where a lot of people were damaged who had no connection with criminal law, and data banks were established that had no connection with criminal behavior. And the leading guidelines are the best protection for the American citizen and for law enforcement and for the FBI that we can have, and I wish it could be turned into a statute.

You are emphasizing correctly that you are going to be hard hitting and are hard hitting in implementing this law; is that correct?

Ms. HARRIS. Yes.

Mr. EDWARDS. And, at the same time, issuing very strict instructions and overseeing the implementation of the law carefully so that the broad brush that can injure legitimate first amendment activities and freedom of association are not threatened. Is that also correct?

Mr. PATRICK. Absolutely.

Ms. HARRIS. That is correct.

Mr. EDWARDS. I have no further questions.

Mr. SCHUMER. Thank you, Mr. Edwards. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Chairman, I voted for this act all through the committee process and on the House floor, and at this point I am trying to figure out what the priorities within the Department of Justice are in enforcing it. I have to say the entire Department of Justice, not just one division or one task force. So I want to state this premise and then ask the witnesses. Either of our Assistant Attorneys General or both are welcome to answer it.

It is possible, as the law is written, to violate this act either through violence, which is obvious, or through nonviolent acts such as civil disobedience. My question is, is there any priority in the Justice Department that says that the priority of enforcement of this act should concentrate on violent breakers of this act versus nonviolent civil disobedience protestors?

Mr. PATRICK. No, I would not say that the Justice Department divides their priorities that way. I will tell you the way that matters are handled in full review now, if that would be helpful, Congressman.

Mr. SCHIFF. I think you answered my general question. The Justice Department does not set a priority that violence is more important than nonviolence in enforcing this act.

Mr. PATRICK. The Justice Department has expressed by creation of the task force a particular concern about the violence, but that is not to suggest that the nonviolent physical obstructions, significant physical obstructions, and that part of our responsibility under it to enforce the FACE Act, is not an interest and responsibility in fact of the Department of Justice.

Mr. SCHIFF. Again, could you say, Mr. Patrick, how many charges have been filed under the FACE Act?

Mr. PATRICK. There have been two criminal charges filed so far.

Mr. SCHIFF. And one is in Florida and one is Milwaukee.

Mr. PATRICK. That is correct.

Mr. SCHIFF. And the one in Florida involves a murder.

Mr. PATRICK. That is right.

Mr. SCHIFF. And the one in Milwaukee—I think you answered the question, but just to be sure—was there any violence or threat of violence in the charge that was filed in Milwaukee?

Mr. PATRICK. Not as I understand it, no. That was an obstruction case.

Mr. SCHIFF. So we only have two cases right now, but in 50 percent of the cases, 50 percent of the two cases, the Justice Department has filed a charge where there was violence and in the other 50 percent the Justice Department has filed a charge where there was no violence.

Mr. PATRICK. That is true. I think the statisticians would tell you there is no statistical significance in that sampling.

Mr. SCHUMER. Good try, Steve.

Mr. SCHIFF. Well, I wonder if the statistics will be any different when we get more cases.

I just want to say that I understand we are still dealing with illegality. We are still dealing with illegality when people peacefully blockade a clinic, but we are also talking about priorities.

In yesterday's hearing it was my understanding that many individuals with long, violent felony records might be in illegal possession of a firearm, but the U.S. attorneys just do not have the resources to prosecute them for possession—illegal possession of a firearm by a convicted felon. And now I am hearing the Justice Department has found the resources to prosecute nonviolence which would be a misdemeanor level, I think, offense.

Mr. SCHUMER. If the gentleman would yield.

Mr. SCHIFF. Yes.

Mr. SCHUMER. There is a major difference, because FACE was intended to be enacted when the State was unable or unwilling to act. They are not supposed to do it everywhere. The State can handle it. If there is a State or a locality where there is a moral predisposition toward not arresting felons who are illegally in possession of guns, then maybe we will have to look into that. But it is apples and oranges, with all due respect.

Mr. SCHIFF. I think not, Mr. Chairman, because I think priority is based upon the same resources with the same U.S. attorneys. But you have brought up the next point very well.

One reason I supported this act was testimony about certain jurisdictions being unwilling or unable to enforce their existing State or local laws against illegal activity, either violent or nonviolent. So I would like to turn back to our witnesses and to ask, in Pensacola, FL, or in Milwaukee, WI, the two places where charges have been filed under this act, was there either an unwillingness or an inability of State and local law enforcement to enforce their respective statutes, whether it was either against a violent act or against an illegal nonviolent act?

Mr. PATRICK. I can say in answer to that, Congressman, that we took that into consideration among other factors.

In Milwaukee, I think there was a strong sense that if the Federal authority did not step forward there was less likelihood of a law enforcement response to that problem.

In Pensacola—

Mr. SCHIFF. Would you—I am sorry. I interrupted you. Pardon me.

Mr. PATRICK. In Pensacola, in fact, the State authorities have been very interested in responding, and we have been cooperating with the State authorities in that case.

What you need to understand is that the Department of Justice has made a choice about how to handle these cases, and the number of matters that have been filed as prosecutions does not reflect the number of matters under active investigation.

We could run into court in every case or in a lot of cases and zap the resources we have devoted to other things, to say nothing of the resources we have devoted to this, and make a great public splash about the enforcement of this act. We have chosen, instead, to try to do this in an orderly way using the factors that we consider for all Federal prosecutions very much aware of the first amendment concerns and to determine, in the first instance, whether the criminal activity is connected, one activity to the next, and to investigate that. And to the extent that we conclude, at least as a preliminary matter that it is not, and in the civil context it is significant to move, and that is what we will continue to do and I hope to do better.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. SCHIFF. Yes, I will yield to the ranking member.

Mr. SENSENBRENNER. I regret the insinuation you have made, Mr. Patrick, that law enforcement in Milwaukee is not adequately dealing with either obstruction or violence in front of abortion clinics. The fact is there has been a longstanding division of labor between the county district attorney's office that prosecutes State charges and the city attorney's charges that prosecutes municipal ordinance violations, including disorderly conduct.

When there is violence involved, it is a State charge that goes through the DA's office; and when there is not violence involved, in a disorderly conduct or failure to obey a lawful order by a police officer, then it gets prosecuted through the city attorney's offices. And the city attorney has literally obtained convictions of thousands of disorderly conduct arrest charges as a result of the massive demonstrations that have occurred before abortion clinics in Milwaukee.

You know, if the Justice Department went ahead, as you said it was going ahead, and filed the nonviolent FACE charges in Milwaukee because of the lack of adequate law enforcement activity and prosecutorial activity, that fact is simply not in evidence. I want to publicly defend both the district attorney in Milwaukee County, Michael McCann, and the city attorney of the city of Milwaukee, both of whom are examples, for doing their jobs in this area.

Mr. PATRICK. Congressman, if that is what you heard, I misspoke. What I thought I was saying, what I will repeat, is that we took that among other factors into consideration and that there was no one factor that was outcome determinative of the decision to proceed in Milwaukee. I am sorry. I did not intend any insult to the authorities in Milwaukee.

Mr. SCHUMER. Just yielding for one further minute.

Mr. SCHIFF. Yes, Mr. Chairman.

Mr. SCHUMER. I understood the gentleman to say that if the city attorney was prosecuting, at most there would be a fine. Is that correct?

Mr. PATRICK. I understood that earlier.

Mr. SENSENBRENNER. That is the municipal ordinance violation, but that is where no violence has occurred.

Mr. SCHUMER. With a blockade it would be, at most, a fine, and FACE clearly goes beyond that. There is no adequate local law giving the setup. It is not impugning their job and what they are doing, but it is saying, at least in terms of this Federal right, that the Congress and the law of the land states that there could well be a higher penalty and that would be a discretion of the Justice Department to decide to bring. I see nothing wrong with that.

Mr. SENSENBRENNER. If the gentleman from New Mexico would yield.

Mr. SCHIFF. I yield.

Mr. SENSENBRENNER. This arrangement was made originally upon Mr. McCann's first election as district attorney in 1969, which was before we had any problems relative to abortion clinic blockades or things like that. It was done in the midst of the antiwar in Vietnam protest. And Milwaukee is a strongly pro-labor town, and it was decided that the best way to depoliticize dealing with picket line violence, which has occurred, unfortunately, in my community, was to have that type of division of labor. And it worked all the way up to the time, apparently, that the decision was made by the Justice Department to file FACE charges.

I yield back to the gentleman from New Mexico.

Mr. PATRICK. I don't know whether you are asking for a response or not at this point.

Mr. SCHIFF. Well, reclaiming my time, the point I have been getting at is the point the chairman stated a couple of minutes ago, and that is the main thrust behind making these already criminal activities Federal violations of law was the concept that local government cannot or would not enforce local laws. And yet in the two examples you have given you make no allegation that the local authorities either in Milwaukee or in Pensacola, FL, could not or would not enforce their laws.

So I think it raises a real question about why Federal resources have fallen in either of those situations where there is already adequate prosecution. That is the issue.

Mr. PATRICK. That is the question. Whether there is adequate prosecution and how relative to the Federal interest that sizes up. But that is but one of the considerations.

Mr. SCHIFF. Well, in Pensacola—explain then this Pensacola, FL. Is there anything derelict in the prosecution you know of in the Mr. Hill case?

Mr. PATRICK. Congressman, I have not tried to indicate and I hope you have not been trying to find in what I have said any impugning of any of the local authorities in any of the places where we are active under the FACE statute.

Mr. SCHIFF. I interrupt for this reason. That was the issue that passed this bill. One second—I will yield back.

Mr. PATRICK. Excuse me.

Mr. SCHIFF. That is all right. I am giving you the floor back.

The issue that passed this bill was the idea that local law enforcement, either by not acting either because they didn't want to or didn't have the resources, was permitting crime to occur. You are now saying in the priorities of the resources of the Justice Department that is only one factor in terms of what the Justice Department looks at in filing these charges. So, clearly, the Justice Department added factors the Congress did not add, I don't think, when it passed this bill. Can you tell us what those factors are? Do you have a written guideline?

Mr. PATRICK. I can repeat the factors that I have laid out, and they are entirely consistent with the language of the statute and with the practice of the Justice Department with respect to enforcement of all the statutes that we are responsible for.

They have to do with the strength of the evidence in a given situation, with the competing State and Federal interests. Whether, for example, bringing a Federal prosecution if it is a criminal matter in some way compromises the ability of the State under State law to follow with a State prosecution. They have to do with where and how the relative severity of the punishment may lie, and our own consideration of our resources, to say nothing of the first amendment concerns that we have been talking about.

Those are factors that we consider whenever we enforce a Federal statute of any kind anywhere. And the fact is that the Congress' interest in the passing of the statute is one of a number of factors that we consider but is not necessarily outcome determinative Congressman. We are following, I believe, the traditions and the procedures of the Department of Justice.

Mr. SCHIFF. I think Ms. Harris wants to join in.

Ms. HARRIS. You are right.

I have one other factor that I think is important for you to focus on, which really does not impugn the local authorities at all, but to the extent that the public interest and the attention to a particularly hideous violent act occurs I believe it is in the public interest for a quick and speedy trial of that matter, and there are times when the Federal courts can move much quicker than the local courts.

It is simply just another factor, but I wanted to underline it for you.

Mr. SCHIFF. Well, Mr. Chairman, let me simply conclude by saying I certainly agree, as we all would agree, that those individuals who commit violent acts should be prosecuted. Speaking for myself, I think those who commit nonviolent civil disobedient acts, such as blockades, also should be prosecuted. They certainly understand what they are doing it when they are doing it, even if they wish to make a point by it.

To me, the issue is the expenditure of Federal resources. And in this particular act, which was always promoted in this Congress as an act we needed to pass because of law enforcement's lack of response, I think that there is a misdirection of priorities to apply the statute in this situation where there is an adequate law enforcement response.

And I would conclude with—this was also overshadowed by the issue of violence against abortion clinics—I believe that violent acts

should get a priority over nonviolent acts, but there has been no showing of such a priority in the cases that have been filed so far.

I yield back, Mr. Chairman. Thank you.

Mr. SCHUMER. Thank you, Mr. Schiff.

Let me just make a couple of points. I have one question, and then I will conclude because I know you have been here a long time.

First, certainly one of the things that motivated the statute was that the localities were not enforcing the law—you read the statute. The Justice Department is interpreting this absolutely correctly. There is no language in the statute that says the Federal Government cannot get involved, must not get involved unless they can prove by any standard that local law enforcement is not getting involved.

I would argue in the Milwaukee case that a fine is not enough. What we found, especially in jurisdictions—and I don't know how it is in Milwaukee—where either the prosecutor or the judge had strong moral feelings that were prolife, they would slap a fine of \$5, and they would do it again and again and again, and the clinic would be effectively closed and people would be deprived of their right.

In the Florida case, there is a different standard and it is hard to generalize, as we say, from two cases statistically as you point out, Mr. Patrick, and that is that this was a heinous crime. This was a crime that cried out for, I believe, national justice. Both the Governor of the State and the attorney general in the State urged Federal prosecution. Am I correct with that?

Mr. PATRICK. That is correct.

Mr. SCHUMER. The local authorities, believed that it was appropriate. I do not think there was anything wrong there.

I have one other question, and then we will conclude, because I know you have to go and we have to vote. The other thing that I was concerned about is that there have been only two criminal prosecutions, and we are getting it from both sides I guess.

Mr. PATRICK. I know.

Mr. SCHUMER. We are used to that. You are used to it, too.

There have only been two criminal prosecutions. As I understand it, there have not been any civil rights actions under FACE. Do you expect that, as part of the Department's enforcement of FACE, such actions will be filed in the future?

Mr. PATRICK. Yes, I am confident of that, and I know we have to do better in that respect.

Mr. SCHUMER. OK. Let me then conclude with this.

I think you are trying hard to do this. I think you can do better and do a little more. And I would urge that you approach this very important law in that regard and with that spirit in mind. OK?

I thank you both for coming, and I want to thank Mr. Brown as well, who stayed out of the fray here. You lucky man, Mr. Brown.

Mr. SCHIFF. I notice he did not volunteer any answers.

Mr. SCHUMER. A smart man, Mr. Brown, too.

I do think we are lucky to have such dedicated servants as Ms. Harris and Mr. Patrick in charge of this law, and I think the initial kinks and the initial problems will be worked out. I hope to see active Federal involvement in making the right to choose as protected

a Federal right in this land as any of our other rights. Thank you very much.

Mr. PATRICK. Thank you, Mr. Chairman.

Mr. SCHUMER. OK, I think, this is an opportune time to break because we have a vote. Let's try to resume in about 10 to 12 minutes. We are in recess.

[Recess.]

Mr. SCHUMER. OK, the hearing will come to order.

And I would like to call our second, very patient panel to the witness stand. It consists of four people. Would they please come forward? Dr. Klopfer, Ms. Taggart, Ms. Hill, and Sergeant Walsh.

OK, our second panel consists of people on the front lines of abortion clinic violence, people who risk their lives working to ensure that the theoretical right to choose has an actual and real-world meaning.

First, we will hear from Dr. George Klopfer. Dr. Klopfer commutes between a clinic in Fort Wayne, IN, and a clinic in South Bend, IN, because there are no longer enough doctors willing to perform abortions.

Second, we will hear from Linda Taggart. Ms. Taggart is a registered nurse and the administrator of the Ladies Center in Pensacola, the clinic at which two people were murdered this last July.

Third, we will hear from Sgt. Bill Walsh. Sergeant Walsh serves on the Fort Wayne, IN, police force.

And, finally, we will hear from Ms. Hill. Ms. Hill owns seven clinics around the country, all of which have been the target of antiabortion protests.

Because of all these votes we are having, we are considerably behind schedule, and so what we will ask each of the witnesses, to keep the testimony to five minutes. And I am going to enforce the 5-minute rule for all the Members here in terms of questions as well.

So, Dr. Klopfer, the microphone is yours, and your entire statement will be read into the record. Please proceed as you wish.

#### **STATEMENT OF DR. GEORGE KLOPFER, FORT WAYNE WOMEN'S HEALTH ORGANIZATION AND SOUTH BEND WOMEN'S PAVILION**

Dr. KLOPFER. I want to thank the members of the committee for inviting me—

Mr. SCHUMER. Pull the mike a little closer.

Dr. KLOPFER. I want to thank the members of the committee for inviting me to talk on behalf of all abortion providers in the country who face the continuing trials and tribulations on a daily basis. I am a member of the select nine that got the letter, except mine was mailed from my hometown rather than from Phoenix, AZ, so it was hand delivered or networked.

The violation of our rights is the reason we are here, and to discuss the fact that local law enforcement officials do not choose willingly or for whatever else reason to protect abortion providers. We are the outcast. We are the black sheep. We are the stepchild. We are whatever. Hopefully, we close our eyes and keep them closed long enough or stick our head in the sand, we will go away.

Obviously, with the episodes in 1993 and 1994, if we wait long enough probably all physician-providers will be shot, and then the freedom of speech episode will not be discussed any more.

I experienced the—not the physical violence and the shooting that Dr. Britton and Dr. Gunn experienced, but I have had the physical violence to clinics and to my property as well as the death threats. The death threats come when you are surrounded by individuals who will openly tell you they are going to break your neck like a twig and/or stuff you in a garbage can and roll you down into the river.

It is this constant harassment on a daily basis that takes its toll not only on the physician but the family, the clinic staff and the surrounding individuals that are affiliated with the clinics.

In these times, one would hope that elected officials, especially in the law enforcement agencies or in the judicial system, whether on a local, State or Federal level, would have the foresight to realize that if we violate the rights of one individual for the sole purpose of making us look good in another episode, we denigrate the whole law of society. Because today it may be me, and after you have gotten rid of me and gotten rid of all the other abortion providers, who will be next? That is the tragedy as far as I am concerned in these local law enforcement officials not doing their job.

We have—in my paper, I have pointed out many, many episodes.

Mr. SCHUMER. Could you elaborate on a few of those for those who do not have the testimony in front of them?

Dr. KLOPFER. One episode that I did mention, I did mention at the beginning, on Mother's Day in 1993 we had some cooperation with the South Bend Police Department, our attorney and the Saint Joe County Sheriff's Department where CALL, which is a Collegiates Activated to Liberate Life, had a major demonstration at the South Bend clinic. This was diffused because the police department finally chose to protect our rights and we diffused their demonstration and blockade.

Mother's Day in 1993 I got a call at 6 o'clock at night. I was at home cutting grass. The administrator, my business partner, called and said that the clinic had a major acid attack. The HAZMAT team was there. I drove from my home to South Bend, and when I got there the fire department would not let us into the facility because the HAZMAT team had not arrived yet. Apparently, several liters of butyric acid—or what we suspect was butyric acid—was dumped into the clinic, and water was inundated into the clinic where we had building damage to the tune of \$60,000.

We were then closed for roughly seven weeks for reconstruction and rehabilitation after the insurance company came short of accusing us of doing the damage deliberately.

The evidence gathered by the HAZMAT team and the South Bend Police Department was supposed to be sent to the crime lab, and it conveniently disappeared, whether in transit from the clinic at city hall or the police station or enroute to the crime lab. I have no illusions.

The other major episodes, since I am sure members of the non-violent pro-lifers are here, we had a Catholic priest with the Lambs of Christ invade the clinic where he threatened our employee, pretending to have a gun in his pocket, and he told her—this is a

woman 4 foot 8, weighs about 90 pounds—that he would shoot to kill her if she did not let him in. And then he proceeded to come in with his fellow thugs, destroy the clinic inside and then chain themselves together.

This episode took 9½ hours, together with 17 people, and then these people were only held in jail for 5 days. No criminal charges were filed. They were given a slap on the butt and sent out of town.

At the same time, a professor of law from Notre Dame University had the audacity to put in the South Bend Tribune that these were the finest people he had ever met. And I have a problem with a professor of law or a lawyer not defending them, but I have a problem with giving them the courtesy of saying they are fine people.

The terrorists who bombed the World Trade Center, were they fine people? Depending whom you ask, I suppose.

I would like to see the FACE bill be vigorously enforced only for the purpose of violent acts, and I reemphasize violent acts. Somebody driving a car into a clinic building, somebody blockading clinic doors, somebody defacing property, physically is a violent act. They do not have to break my arms. They can break me financially and do the same thing.

Thank you.

Mr. SCHUMER. Thank you, Dr. Klopfer.

[The prepared statement of Dr. Klopfer follows:]

# STATEMENT OF Dr. George Klopfen

I want to take the time to thank the members of the Committee on the Judiciary for inviting me to speak on behalf of the physicians who provide abortion services who face the continuing trials and tribulations on a daily basis. As a member of a selected handful of targeted physicians for assassination by the more aggressive and violent anti-choice radicals.

The violation of rights extend the whole gamut from failure to enforce laws that are presently and have been passed many years ago, as well as outright harassment in the form of local entities pursuing a plan of violation of civil rights, using the mail for extortion, and outright fraud, and encouraging others to violate these statutes with failure to prosecute effectively or not at all to the detriment of all abortion providers in this country.

In times past, the Federal Government has had to encourage, cajole, or demand that local authorities enforce all laws equally and justly, no matter how much one aspect of same may not be to the liking of the local officials, whether they be judges, prosecuting attorneys, mayors, public safety directors, or the policeman or sheriff's deputy that takes it upon himself not to enforce the statute.

It is tragic that in these enlightened times, a small segment of the population which chooses not to abide by the laws of society advocates the murder of anyone and/or anybody who does not subscribe to their brand of religion. All members of society must obey the fabric of statutory law that governs, otherwise the destruction of any society is imminent and chaos and anarchy will result.

My trials, harassment, denials of due process of law, and other entities of persecution started in 1979, at the hands of the Illinois Attorney General, and other branches of the Illinois State Government. Having provided services for indigent women in January of 1978, through March of 1979, under Federal Injunction to this date, I am still awaiting payment. Requesting explanations and due process, took from 1981, 'til the first hearing in 1986, 'til the first adverse decision in 1990. The attempt to work within the system has been an abject failure and brought down the wrath and pursuit by multiple agencies in the state government to encourage by any means, i.e., subversion, coercion, threats, and outright intimidation to drive me out of the State at least in the fashion to make any possibility of pursuing my medical profession either impossible or to bankrupt me through legal fees and years in the justice system.

This vitriolic attack upon my person and ability as a health care provider has extracted a heavy toll from me, my family, and driven many physicians to cease and desist in order to survive financially, and preserve their sanity, family life, and protect their loved ones from constant attacks, whether verbally in printed word or physically or all of them together.

No Federal, State, or local official and/or employee, has gone 15-1/2-years without a paycheck, and it is inconceivable that these same entities feel it is just and right to deny a health care provider any renumeration for services provided under a Federal Injunction and whereas a portion of those funds were received from the Federal Government.

The upsurge in violence, criminal behavior, property destruction, stalking, death threats and bodily harm took a ballistic rise in the mid-80's. Whereas the anti-choice movement did not realize the hope for legal abolishment of abortion, they resorted to whatever means possible to achieve their objectives.

Stalking physicians and clinic staff, family members, as well as clients became the norm rather than the exception. Dis-information, outright lies, false literature, defamation of character, all of these were in their armamentarium of the anti-choice movement. Personally, in the last five years the following events have transpired courtesy of the hate groups, that wish to see me either shot or permanently disabled. The local authorities, for many years, have looked upon these protestors as people exercising their first amendment rights, but when I did the same, i.e., exercise my freedom of speech, I am classified as being "volatile, an instigator, and troublemaker." - In Fort Wayne. This comes as courtesy of not only the local police officials, but also the U. S. Attorney and the F.B.I. I was not aware that the First Amendment had gradations as to who could and who couldn't exercise these rights.

In 1988, the stalking at night, the inability to freely travel without being followed became a reality. The culmination of their efforts against another physician by N.E.I.R. caused him to resign his position and allowed N.E.I.R. to provide the full attention of their attacks upon me. As the only physician to provide service at Ft. Wayne W.H.O., they made sure to increase the verbal attacks, stalking me for distances up to fifty or sixty miles, flattening my tires with roofing nails, or stealing the valve stems whether I was in South Bend, Goshen, twenty miles away, or in Ft. Wayne, did not deter them, either through networking, or individually stalking me. When I stayed overnight in Ft. Wayne, my car was inundated with red paint, my locks were filled with acrylic glue, to prevent moving the vehicle in the morning, or spray paint it with old oil, lacquer, or any other foul substance they could think of to incapacitate my vehicle, and thereby, me.

One time, they blockaded my vehicle, and then stole my car keys and money. Even though I gave a description of the person, and name, to local authorities, they failed to prosecute this individual "because he turned the keys into another police station eight hours later!!!" This same individual was later given three felony convictions as defined by Federal statutes, and was released after three months without any parole stipulations, because he chose not to, and the system in Ft. Wayne either is afraid of his political influence, or does not care because the crimes were committed against an abortion provider. This same individual stalked me to restaurants, shopping centers, wherever; but again, the local authorities chose not to enforce local and state anti-stalking statutes, or the Federal Injunction, because of the nature of the service that I and Pt. Wayne W.H.O. provide. I have had local police officers state unequivocally to my face that "they are the law, and will do as they please, no matter what the intent of the Federal Injunction or laws may be." It is this kind of attitude that permeates from the highest levels of city government i.e., Mayor, to the lower levels, i.e.; officer in the street. The States Attorney who decides which laws he will pursue, and which he will conveniently ignore, reject, dismiss, because they do not fit into his personal, political, or religious convictions, is more dangerous, than the religious terrorist, that shoots the doctor or clinic staff in the back. This insidious behavior on the part of the elected or appointed officials undermines the very fabric of this Democratic society, and causes the majority to believe the system works only for a select few, rather than the whole.

Even though Congress has enacted laws to deal with recalcitrant local officials, to my knowledge no community has yet to lose community block development grant funds for their flagrant violation of their enforcement of local statutes.

Any phenomenon in nature has a causal relationship, disease-cure, action-reaction. Statutory law, no matter how well written, is meaningless unless the consequences of violation are applied in an equal and just fashion to all parties without question and said punishment is a deterrent for recurrence of the violation in the future.

In continuation, December, 1990, the clinic in South Bend was invaded by a para-military group, the leader, a Catholic priest, threatened our employee with a weapon, and threatened verbally to the effect that he would "shoot to kill," and for her to get out of the way. This group then proceeded to destroy, deface, defile, the clinic interior, and chain themselves together in the clinic hallways. The local law enforcement agencies took nine hours plus to remove said terrorists from the premises and held them in jail for five days. The State Prosecuting Attorney refused to file criminal charges, refused to get proper identification, check on outstanding warrants in other jurisdictions, and release them without making them pay restitution for damages to the clinic owners, even though Indiana laws demand the same. The day after they were released, the clinic's roof was axed, and an additional \$5,000 of damages were incurred. Not only were the clinic owners victimized by the religious terrorists, but also by the lassitude of the local authorities in their pursuit of justice, and fair and equal treatment for all. This group of terrorists, albeit religious ones, were identified by a professor of law from Notre Dame Law School, as the finest people he has ever had the privilege of meeting.

In April, 1991, roughly 110 people affiliated with N.E.I.R., from as far away as one hundred miles, came to South Bend to blockade the clinic entrances and cause a disturbance which interrupted business for that day, as again local

authorities procrastinated in swift and decisive fashion. These individuals were also released on their own recognizance, even though they were ordered to pay minimal court costs, only a few have complied to this day. The Summer of 1991, brought other unpleasant surprises in the form of shooting out clinic windows, which police called vandalism, causing additional expenses to the tune of \$4,000, for bulletproof windows. Spray painting and defacing the walls, gluing the locks, painting the windows, all fall into the category of continual attacks with the failure in spirit at least by local authorities to catch and prosecute these destructive elements.

May, 1993, South Bend, the clinic had a major demonstration of national origin, which was somewhat defused, due to the local law enforcement agencies, our lawyer, and owners cooperated in preventing a blockade. This did not deter damage to property as on Mother's Day, 1993, the clinic suffered a major destructive acid attack, resulting in \$60,000 of damage to contents and building, as well as inability to operate our facility while repairs were going on for a period of seven weeks. These losses, financial, property, and business, are a physical and emotional hardship on all providers of abortion services.

It is additionally tragic that the insurance industry, by their very nature, have a jaundiced view of this damage and destruction, and pursue an avenue of further denigrating the providers by outright denial of full and just payment, preferring to imply that the clinic owners did the damage for purposes of fraud and self-enrichment. No clinic owner, that I am aware of, would deliberately destroy their ability to provide a necessary and needed service in their community with the intent of defrauding an insurance company.

Asking for help from the States Attorney General Office was met with a biased, judgemental attitude; how dare we have the audacity to ask for help? These behavior patterns, by elected local officials, whether they be judges, attorneys, police, building inspectors, zoning boards, or taxing authorities, have for the most part worked to the detriment of abortion providers in an unjust fashion.

The trials and tribulations do not stop or diminish on a day-to-day basis. Of two particular episodes<sup>of</sup> total lack of protection must be mentioned to further illustrate the need for decisive action by the Federal Government to protect the rights of all from the abhorrence of some local officials whether elected or not to equally just and fair mandate all statutory laws irrespective of their own political concept and/or religious beliefs.

January, 1990, N.E.I.R. organized a demonstration of roughly 200 people from Ft. Wayne, in front of my abode. The Illinois statutes prohibit any residential picketing, which the Will County Sheriff and the States Attorney were cognizant of its existence. These people traveled 110 miles across state lines to harass my neighbors, run wild around my property, and around the house, threatening the inhabitants, and inspite of calling the Will County Sheriff, we had to endure three hours before a Sergeant arrived to instruct the deputies as to what they could and should not do. They were finally escorted out of our subdivision, and taken to Joliet, the County Seat. There, the sheriff, instead of enforcing the laws of Will County, Illinois, elected to give them a verbal reprimand, and then released them. This unfortunate turn of events was promulgated by an Assistant States Attorney, who chose not to enforce the laws, even though we were requested to come and file complaints against these individuals.

Later that week, calling said States Attorney, we were admonished by him for questioning his authority, and lack of his enforcing these laws as written. Upon telephone conversations with the sheriff, we were told by him that he gave them a stern warning not to do it again. What a novel concept, that law enforcement should be so easy or so idealistic. Needless to say, we have had multiple recurrences of demonstrations, picketing, and prayer meetings in front of our residence; even though we call law enforcement agencies, the deputies end up taking away my civil rights and protecting these religious terrorists.

Summer, 1993, the same Sergeant, who took three hours to travel fifty miles in January, 1990, was again protecting the same protesters from my house, property, and me. When I asked him to enforce the laws his replies were standard fare; I take my orders from the States Attorney's office, and if I did not like it, I should go into my house, and be quiet until the protesters leave. At the conclusion of that Saturday, the Sergeant from the Will County Sheriff's Department shook hands with the majority of protesters, and had his picture taken shaking the hands of the leader of the group. No concept of any bias on his part, I knew where I fit into the scheme of things.

The same States Attorney who chose not to prosecute the original group thought it was very important to prosecute me for some obscure ordinance regarding the number of automobiles on my own driveway. Ironic that protecting religious terrorists from prosecution has a higher priority than prosecuting an abortion provider under some obscure county ordinance.

In conclusion, the majority of abortion providers want peace and tranquility upon arrival of their residence without a concerted effort by their local authorities to continue an open policy of harassment, persecution, obstruction of justice, and being stalked by misguided law enforcement officers, which I had the misfortune to experience this summer. No one has all the solutions to the problems, but in giving this testimony, I hope that in elucidating the nature of the problems we may hope for a swifter resolution before all abortion providers suffer the same fate as our colleagues have, who were murdered by an assassins bullet in 1993, and 1994.

Mr. SCHUMER. Yes, Ms. Taggart is next.

**STATEMENT OF LINDA TAGGART, ADMINISTRATOR, LADIES CENTER, PENSACOLA, FL**

Ms. TAGGART. I am a registered nurse—

Mr. SCHUMER. You can pull the microphone a little closer to you. Thank you, Ms. Taggart.

Ms. TAGGART [continuing]. And for the past 20 years the administrator of the Ladies Center of Pensacola, a women's health center which offers first trimester abortion services.

For the past 11 years, I have been harassed, assaulted, stalked and had my home picketed. The clinic has been the site of weekly protests with as many as 2,000 protestors at one time. We were bombed twice in 1984, on June 25 and again on Christmas Day. The convicted bombers, James Simmons and Matthew Goldsby, are back on the streets.

The clinic was invaded in 1986, and the local NOW president and I were both injured. It was done by John Burt. And with him was Joan Andrews, Burt's daughter, and another of his residents in his Our Father's House. The quartet trashed procedure rooms and locked themselves in these rooms. And, except for Joan Andrews, they were all put on probation for felony charges, and they are all back on the streets, mostly in front of my clinic.

In 1985, the Pensacola Police Department had me move my daughter secretly out of town because of a kidnapping threat. In 1986, the protestors falsely accused this same daughter of battery and had her arrested, even though she was at work and at McDonald's at the time. The so-called battery was later proved to be a patient who was leaving the clinic and trying to protect herself from these protestors.

In 1988, John Burt led a bomber, John Brockhoeft of Kentucky, to the clinic in violation of his probation. The bomber was convicted in Federal court and sent to prison in Kentucky. John Burt was found to be in violation of probation and put on house arrest; never brought up on charges on conspiracy and never sent to prison.

A small piece of property attached to our property on two sides was sold to John Burt in 1992. It necessitated our building an 8-foot privacy fence to protect our patients from the epithets, curses and sight of these protestors. Silly me. Burt put up scaffolding to appear above the fence. They have used generators to run gross videos and speaker systems. As a recent event, the city of Pensacola declared the scaffolding unsafe for human use, and Burt is challenging the city in court.

On March 10, 1993, our medical director and close friend, David Gunn, was murdered at Pensacola Women's Medical Services. During the trial of Michael Griffin, while I was on vacation, Paul Hill went to my home. When no one answered the door, he went to my neighbor's house looking for Linda Taggart. Knowing who he was, my neighbor said that I did not live there, shut the door very quickly, and called my office. My assistant called the city police who took a report.

I am the one who telephoned J. Bayard Britton to ask for his help after Dr. Gunn's murder. He hesitantly accepted. It is a long trip from Fernandina Beach to Pensacola, FL, more than a 6-hour

drive, but he said he would help us out until we found somebody else. And so he stayed because we grew to love him and he grew to love us until the morning of July 29, 1994.

These murders should never have happened. The atmosphere that has been allowed and encouraged in Pensacola and other known areas can be likened to terrorism anywhere in the world. If the first amendment to the Constitution is to be interpreted as freedom of speech, then the horrible rhetoric of the fanatics who stalk our clinic, the doctors, the employees, and the patients can be likened to the same type of madman who would yell "fire" in a crowded theater just to watch people be trampled to death.

On June 10, 1994, Paul Hill decided to step up his protests by trying to prevent patients from entering the clinic property and screaming into the clinic windows. Since the FACE bill had been signed into law by the President just weeks before, I wanted him arrested under that law. Our local police had no guidelines for such an arrest.

I then telephoned the local office of ATF to ask who did have the authority and was referred to the FBI. I explained to them what happened, and they sent out an agent. The agent said he would take down the information but could not make an arrest as he had no guidelines.

Needless to say, I was most frustrated. I decided it was past time to go to the top. I telephoned the Justice Department, Attorney General Janet Reno's office specifically, and after two explanations was put in touch with Kevin Forder in the Civil Rights Division. I explained who I was, what had happened, and what I was seeking.

Mr. Forder informed me he was familiar with the clinic and Paul Hill's activities, but this was not the time to arrest him. He said these problems have always been a local police problem and would continue to be so. He also said he would call the U.S. attorney for Northern Florida, Michael Patterson, and ask him to get together with the local police chiefs and State attorneys to encourage enforcement of local and State laws. When I hung up, I was as frustrated as ever and still did not know what to do.

The next week, June 17, 1994, Paul Hill was arrested at the clinic for the same activities by the city police, using a local noise ordinance. He was booked and released. And the day before yesterday he was found guilty on those charges. And since he is already sitting in jail on other charges he did get 45 days, but that is it.

And so we come to early morning, July 29. My heart is broken again. My friends and colleagues are dead, murdered by a known terrorist. June Barrett lost her husband and nearly lost her life. The help I asked for early on was not given, and we are all at risk from others bent on this same destruction.

This is not just my problem or Pensacola's. It is this Nation's problem. I had not yet recovered from David Gunn's death when these murders occurred. The pain is new and renewed. We have to protect the doctors, nurses, employees, escorts and the women who come to the clinics. I thought FACE would do it. And it just has to.

Mr. SCHUMER. Thank you, Ms. Taggart.

[The prepared statement of Ms. Taggart follows:]

My name is Linda Taggart. I am a Registered Nurse and, for the past 20 years, the Administrator of the Ladies Center of Pensacola, Florida, a women's health center which offers first trimester abortion services.

For the past 11 years, I have been harrassed, assaulted, stalked, and had my home picketed. The Clinic has been the site of weekly protests with as many as 2000 protestors at one time. We were bombed twice in 1984, on June 25th and Christmas Day. (The convicted bombers, James Simmons and Matthew Goldsby, are back on the streets!) The Clinic was invaded in 1986, and the local NOW president (who was escorting patients at the time) and I were injured by John Burt. Joining Burt were Joan Andrews, Burt's daughter, and another of Burt's residents. The quartet trashed procedure rooms and locked themselves in these rooms. Except for Joan Andrews, they were all put on probation for felony convictions and are all on the streets (mostly in front of my Clinic).

In 1985, the Pensacola Police Department had me move my daughter out of town secretly because of a kidnapping threat. In 1986, the protesters falsely accused this same daughter of battery and had her arrested, even though she was at work at McDonalds at the time. The so-called "battery" was later proved to be a patient who was leaving the Clinic and trying to protect herself from this protester.

In 1988, John Burt led a bomber, John Brockhoeft of Kentucky,

to the Clinic, in violation of his probation. The bomber was convicted in Federal Court and sent to prison in Kentucky. John Burt was found to be in violation of probation and put on House arrest; never brought up on charges of conspiracy and never sent to prison.

A small piece of property attached to our property on two sides was sold to John Burt in 1992. It necessitated our building an eight foot privacy fence to protect our patients from the epithets, curses, and sight of these protesters. Silly me! Burt put up scaffolding to appear above the fence. They have used generators to run gross videos and speaker systems. As a recent event, the City of Pensacola declared the scaffolding unsafe for human use. Burt is challenging the City in court.

On March 10, 1993, our Medical Director and close friend, David Gunn, was murdered at Pensacola Women's Medical Services, another clinic in our city. During the trial of Michael Griffin, while I was on vacation, Paul Hill went to my home. When no one answered the door, he went to my neighbor's house looking for "Linda Taggart". Knowing who he was, my neighbor said that I didn't live there, closed the door, and called my office. My assistant called the City Police who took a report.

I am the one who telephoned J. Bayard Britton to ask for his help after Dr. Gunn's murder. He hesitantly accepted. It's a long way from Fernandina Beach to Pensacola; more than a

six hour drive. But he said he would help us out until we found someone else. And so he stayed, because he grew to love us and we, him, until the morning of July 29, 1994.

These murders should never have happened. The atmosphere that has been allowed and encouraged in Pensacola and other known areas can be likened to terrorism anywhere in the world. If the First Amendment to the Constitution is to be interpreted as Freedom of Speech, then the horrible rhetoric of the fanatics who stalk our Clinic, the doctors, the employees, and patients can be likened to the same type of madman who would yell "FIRE!" in a crowded theater just to watch people be trampled to death! On June 10, 1994, Paul Hill decided to step up his protests by trying to prevent patients from entering the Clinic property and screaming into the Clinic windows. Since the FACE Bill had been signed into Law by the President the week before, I wanted him arrested under that Law. Our local police had no guidelines for such an arrest. I then telephoned the local office of ATF to ask who had the authority to make such an arrest and was referred to the FBI and explained what had happened; they sent out an agent. The agent said he would "take down the information", but could not make an arrest as he had no guidelines. Needless to say, I was most frustrated. I decided it was past time to "go to the Top". I telephoned the Justice Department, Attorney General Janet Reno's office specifically, and after two explanations, was put in touch

with Kevin Forder in the Civil Rights Division. I explained who I was, what had happened, and what I was seeking. Mr. Forder informed me he was familiar with the Clinic and Paul Hill's activities; BUT THIS WAS NOT THE TIME TO ARREST HIM. He said, "These problems have always been a local police problem", and would continue to be so. He also said he would call the U.S. Attorney for Northern Florida, Michael Patterson, and ask him to get together with the local police chiefs and State Attorneys to encourage enforcement of local and State laws. When I hung up, I was a frustrated as ever and I still didn't know what to do.

The next week, June 17, 1994, Paul Hill was arrested at the Clinic for the same activities by the City Police, using the noise ordinance. He was booked and released.

And so we come to early morning, July 29, 1994. My heart is broken again. My friends and colleagues are dead, murdered by a known terrorist. June Barrett lost her husband and nearly lost her life. The help I asked for early on was not given and we are all at risk from others bent on this same destruction. This is not just MY problem, or Pensacola's. It is this nation's problem. I had not yet recovered from David Gunn's death when these murders occurred. The pain is new and renewed. We have to protect the doctors, nurses, employees, escorts, and women who come to the Clinics. I thought FACE would do it. It has to!!

Mr. SCHUMER. Go ahead, Sergeant Walsh.

### **STATEMENT OF BILL WALSH, SERGEANT, FORT WAYNE POLICE DEPARTMENT**

Mr. WALSH. I would like to make one comment right off the bat. I am not a former policeman. I may be tomorrow.

Mr. SCHUMER. I was saying to myself when I read the testimony here, I guess they let them keep their uniforms after they retire.

Mr. WALSH. Well, as I say, I may be tomorrow.

Mr. SCHUMER. The record will please be corrected. Strike the word former in my introduction. Thank you, Sergeant Walsh.

Mr. WALSH. I appreciate the fact you invited me here to speak. I speak as a policeman that has been on the line at a clinic in Fort Wayne, IN, for the last 6 years, at least.

When I first received my invitation I will admit to you I knew nothing about the FACE Act. It had not been passed on to me. At that time, when I received my invitation, there were two U.S. marshals assigned to the clinic in Fort Wayne. I approached them and asked them what they knew about it, and they says they did not have it. They knew that it had come down to them, but they had not read it.

I says, then who enforces it? And they says they have to write a report, send it to the FBI. They, in turn, will review it, and then they will make the action, if any. Which means I have nothing to say except writing a report and sending it to the Federal marshals who review it, then send it to the FBI to review it. And in the process it will probably get lost.

We have a Federal restraining order which the board of safety advised the health clinic that that would be their remedy to their problem that they have down there. I testified in Federal court, and I was criticized in the court by the other side. The chief and board of safety director was on one side, and I was on the other side. I did not take sides of prolife or prochoice. I was only stating what the problems was since I was down there.

They had granted a Federal injunction and in the process they told the local police they had to supply a policeman down there. I cannot enforce a Federal injunction. Everybody thinks that we are empowered to do this, and we are not. I can only enforce local ordinances, county laws and State laws. And I have to send my reports to the Federal prosecutor in Fort Wayne. He, in turn, will review and then state what they are going to do.

I have made numerous arrests for trespassing. One morning at 5:30 in the morning I was there on my horse, and the people came in droves, and they tried to barricade the door with a big cement block. I stopped that. They had 5-foot-long pipes with seat belts welded in the center of them and then they had a strap around their arms and had their arms in a big long pipe. Then they put three tires around their bodies and so that it would make it almost impossible for me to move two of them at one time.

Within probably half an hour I had them all removed and all the rubble removed. Even the local news media did not get on it. I arrested them all for trespassing. It was sent over to the Federal prosecutor on a Federal restraining order, and I have a comment

that they made that I can supply you with that was not in my summary.

OK And in this he stated that he saw insufficient evidence to pursue it any further, and it would have to be done on a local level.

In those cases, I testified before a jury, and the fact that the one man that was shoving the 500-pound cement block and shoved it into my legs, and I advised him he was trespassing. He, in turn, turned around went off the property. It was all videotaped. And he was found not guilty, but yet he trespassed. Then that means if a person enters the property and I tell them they are trespassing and they leave, you cannot arrest them. And it would be a waste of the court's time and my report writing to arrest them any more.

Also, with the Federal prosecutor, they seem not to want to do anything. They would not send Federal marshals down there.

Since you put this act into effect and the doctor was killed in Pensacola, FL, they have assigned two of them down there. They were 24 hours a day, 7 days a week, now they are down to now working 12 hours a day, 7 days a week, during the daytime, not at nighttime.

And I asked, the first day they showed up, and they said we are down here but we are not going to do anything. If you need any help, you contact us, and we will help you the best we can.

If you have any other questions, I can tell you a lot of stories that has went on there since I have been down there for 6 years.

Mr. SCHUMER. You have told us plenty.

Mr. WALSH. I think if you are going to make acts and Federal restraining orders you should make them such that if I am the one to be stuck down there I should be able to enforce it. Otherwise, send a person who can enforce it down there.

Mr. SCHUMER. You sum it up very succinctly, Sergeant.

[The prepared statement of Mr. Walsh follows:]

**Statement by Sergeant Bill Walsh,  
Fort Wayne Police Department**

I feel honored to be able to give the impressions of someone down on the lines being affected by this issue on a day-to-day basis. I'd like to express how some of the laws which are in place have functioned in the clinic situation. I was involved before some of these laws were in place, and I've been involved afterward. In brief, for a multitude of reasons, laws intended to control the situation have been made powerless.

**Freedom of Access to Clinic Entrances Act.**

I've never seen a copy of this act, though I've asked for it. I discussed the act with federal marshals at the clinic, they said all reports had to be forwarded to the FBI to review and determine what action to take, if any. All I can do is ask, then, that my stuff be forwarded on if any violations of the act occur.

**Federal Injunction**

The clinic was advised to obtain a federal injunction which most clinics around the country have done. Locally I went to federal court as a witness, following that, an injunction was issued that limited where the protesters could be. The injunction set aside an area which would only allow two counselors in the zone at any given time.

The area that was set aside was roughly of the same dimensions as I had previously lined off with a police line in my attempts to control the situation. The injunction had us paint a permanent yellow line on the pavement to replace the plastic police line tape I had used.

Now, the problem is, when people entered that area, local police could not enforce the injunction. We were told the only ones who could enforce it were the U.S. Marshals who were not there. I videotaped infractions, wrote reports and channeled them to the federal prosecutors office. I advised both sides as they complained to me about the situation to videotape the incidents themselves and take them to the federal prosecutors.

In some cases, I know the sides took the videotapes to the prosecutors office, but to my knowledge, nothing became of them — no action was taken.

I have made numerous arrests on local ordinances, mainly trespassing, and obtained convictions on most of them. But they were reviewed by the federal prosecutor. His statement was that there was insufficient evidence to take action on them, even with my local convictions.

So, on the federal injunction, my hands are tied. I read them the federal injunction each week, but people flow in and out of the area so often that, to be effective, the injunction would have to be read every five minutes. Besides, everybody there knows that the local police cannot enforce the injunctions. They know it takes a U.S. Marshall.

Now, for the last three weeks, there have been two U.S. Marshals at the clinic. But, they've taken no action so violators of the injunction feel nothing is going to be done to them.

I questioned the marshals during an incident where the clinic owner was being harassed on a non-procedure day, by approximately 80 people in the park next to the clinic. She told the marshals the federal injunction prohibited the protesters from harassing her and asked them for help. Both parties told me that the response of the marshals was to tell the clinic owner to go back inside the building —then she wouldn't be harassed.

I asked the marshals why they didn't read the injunction, they replied it was the local law enforcement agencies responsibility to do so.

### Caught between a rock and a hard place

The local police are in a tough position because the local police cannot enforce the federal injunction or the access to clinic act. We can only enforce local laws and state laws. So our primary tools are disorderly conduct, trespassing, obstructing traffic or battery. Besides the things we can charge for locally, my only tools are to try and negotiate with both sides to behave rationally.

I arrested one guy three times for trespassing. He had a jury trial. He was given three consecutive years. The protesters harassed the city Judge to the point where he released the man after about 6 months. After which he was right back at the clinic. He's violating the injunction every week.

The clinic has had a fire the night before procedures were performed. Gas mains have been shut off in below-zero weather. All the locks into the clinic have superglued numerous times. Rocks have been thrown against the windows. The clinic doctor's car has been superglued numerous times in Fort Wayne. He's had tires flattened and red paint thrown on his car. People have followed him when he's been driving. And have kept him from being able to leave. I've had to call the state police to help the doctor leave.

The county prosecutor has not denied any of the cases I've sent before them related to this issue. They've done a super job of prosecuting.

There is a case pending in court now that the Pro-life brought against a client and her friend because they maced a counselor. The restraining order reads if a client says "no" once, the counselor is supposed to back off.

In this case, the client warned the counselor that if she would mace her and the counselor didn't back off, so that's what happened. The patient was arrested. The case is still pending in county court.

Both sides bring their complaints pertaining to the injunction to me. All I can do is write a report and send it to the federal prosecutor if it pertains to the injunction. It probably appears that the city police aren't doing their jobs—but we can't. It's not our jurisdiction.

## General Arrest History

Prior to the injunction, we had two rescues with close to 1,000 people protesting each time. Of those, 400 people were arrested on misdemeanor charges such as trespassing and obstructing traffic. Most of them received minimal fines and were turned loose.

Since the injunction, I've arrested 17 people for trespassing. One person I've arrested three times for trespassing on the property.

The local police feel any time they are assigned to the clinic it's a punishment. I get the same feeling; from the U.S. Marshals who are there now. The main reason is because the local police know they can't enforce the injunction and people are constantly complaining about the violations to the injunction and the fact the local police aren't doing anything.

I don't feel I'm being punished by being down there. I try to do everything on an equal basis and uphold the laws that I took an oath to govern. I try to keep a rapport with both sides. Unfortunately that's where some officers get in trouble. They take sides and make it obvious what side of the controversy they are on.

I've talked to other police departments who have to deal with this issue. I get the same impression from talking to them that they'd rather be doing police work somewhere else rather than monitor the clinics.

I find it appalling that the clinics around the country have had to spend so much money for injunctions which are basically unenforceable. Part of the problem is the U.S. marshals are understaffed, too.

**Suggestions:**

Since local police are the ones on site, then the laws should be adjusted so that those who are present at the situation can enforce it. Making the law, but not enforcing it, is counterproductive.

Of the last 17 arrests, eight were out-of-town or out-of-state offenders. Radicals are present at the clinics. Tempers do flare. You have a tremendous influx of out-of-town people at these disturbances, and it appears someone is paying them to be involved.

**Arrest Summary:**

- May, 1989 A group of 400 people were arrested during two rescues at the clinic. Some of the 400 pled guilty and received small fines. The other individuals were to be tried as a group. They all requested a jury trial, but then compromised and the issue was settled out of court to avoid court backlog.
- Jan. 11, 1990 The head of NE Indiana Rescue stuck a pro-choice advocate in the face in my direct line of sight. I arrested him. On June 13, he received a \$100 fine, \$103 in costs, 100 hours of community service and was restricted from the area of the clinic. He also had to write a 10-page essay about "competing and conflicting ideas in a pluralistic society, such as America."
- Jan. 7, 1993 With the federal injunction in effect, seven people attempted to place a 400 pound chunk of cement in front of the clinic door. They were then going to chain themselves to the cement. At two other entrances, individuals were attempting to lock their arms inside 5-foot tubes with seat belt straps. Each individual had three rubber tires around their body. The individuals

were planning to use their bodies to obstruct the entrance to the clinic. The individuals were arrested for trespassing. They also asked for jury trials. Two individuals were released because they left the clinic area when they were asked to leave. The others settled out of court.

July 2, 1993 One individual was arrested three times on local trespassing charges after the federal injunction was in place. Those charges were remanded to the federal court for a ruling about contempt of the injunction, but on Feb. 12, 1993, they refused to take the case saying there was insufficient evidence to prosecute. The federal court also said the preferable venue was state court. In a local court, on the trespassing charges, the individual, in July, was given a three-year prison term and a \$1,500 fine. He served six months of the sentence and was then released after the protesters picketed the courthouse and launched a telephone campaign against the judge involved. This same individual has been charged for similar actions in Ohio and Kansas.

Mr. SCHUMER. Ms. Hill.

## **STATEMENT OF SUSAN HILL, PRESIDENT, NATIONAL WOMEN'S HEALTH ORGANIZATION**

Ms. HILL. I want to thank the subcommittee for your kind invitation to appear for a second time in a hearing concerning the FACE bill. The last time I was here was on April 1, 1993, 2 weeks after a friend and colleague, David Gunn, had been murdered in Pensacola. At the time, I asked you to recognize the very real threat we were all facing. This committee did so, and with a strong commitment answered our prayers and moved the FACE bill onto passage.

All through the debate of the bill, I continued to question one aspect of the bill, and that was enforcement. I asked here and in other situations, who could we expect to enforce FACE: The same local law enforcement officials who would not enforce Federal injunctions or State laws? Or Federal officials, uncomfortable with local law enforcement problems? We came to you for help because we had been everywhere else. You were our last resort.

Now we come to you again—tragically, with two more colleagues murdered in cold blood. Since Dr. Gunn's murder, we have been confronted and attacked more violently than ever. Protestors stalk our physicians, staff and patients, slash their tires, vandalize their cars, write and call in death threats. Protestors enjoined from our clinic properties come to our homes at 3 o'clock in the morning to wake us to come outside.

The FBI takes our death threats but tells us they cannot really investigate them. The locals tell us the Feds should do this. The Feds tell us the local authorities have jurisdiction.

And so we sit once again with a Federal law, much publicized, and no one to enforce it but us. Once again, we are told by all authorities that we must be attacked, file the complaint and seek the remedy. We are the police and prosecutor on this one and only criminal offense.

I am sorry Congressman Sensenbrenner is not here because we debated this last time, but we have a clinic in Milwaukee that we have had since 1975. I have had personal meetings with the district attorney in Milwaukee who has made it very clear to us privately and publicly that he would never prosecute blockade orders. Two thousand people were arrested in Milwaukee in the last year and a half. They got what was the equivalent of traffic tickets. And I fail to understand how Congressman—

Mr. SCHUMER. What was the fine on those, Ms. Hill?

Ms. HILL. I believe \$25 was the ultimate fine on that.

Mr. SCHUMER. I would ask counsel to inform Mr. Sensenbrenner of that.

Ms. HILL. If he knows of other instances where they received stiffer penalties, I would love to have that information. We never saw them in front of our—

Mr. COWIN. I think his point was the same penalty would apply to all demonstrators—civil, antiwar, et cetera.

Ms. HILL. I did want to make one point for the Congressman from Milwaukee, and I made this the last time. Part of the frustration was a lot of people—in the hundreds in Milwaukee—had al-

ready been arrested in front of our Fargo clinic and were on their way to be seen in front of our Fort Wayne Clinic.

So these were not all just local citizens who came out one time for a peaceful protest. These were Lambs of Christ, people who are nomadic by nature, travel from city to city, spend as much as a year in jail, when we can get enforcement of any law, any legal way, and they make a business of going from city to city harassing us, closing down our clinics and living on the taxpayers dollar for up to a year. I hope you will convey that to the Congressman.

In Fort Wayne, on August 4 through 6, 1994, our clinic was the site of another Operation Rescue. Because of vicious attacks in the past 15 years, Fort Wayne Women's Health Organization—the only clinic for 3 hours any way—had obtained, at its own expense, a Federal injunction with a buffer zone in 1989 from a Republican Federal judge.

The local authorities were ordered by the judge to read the injunction every morning to give adequate notice to all protestors. For the past 8 months, the police have refused to or failed to read the injunction at all.

In October 1993, there was a blockade of the clinic and 11 violators of the injunction. The U.S. attorney in Fort Wayne refused to bring contempt charges, saying he had no jurisdiction to enforce the injunction. U.S. marshals refused, upon our request, to come near the clinic. The local Fort Wayne police refused to arrest under the injunction to charge contempt, saying they said no jurisdiction.

All parties said we, the private party, would have to file civil complaints. The Justice Department told us they could not have U.S. attorneys enforce Federal injunctions brought by private parties.

Prior to this August 1994, rescue, we met with all local law enforcement officials to get a lay of the land. On August 2, we met with two deputy U.S. attorneys in Fort Wayne who told us that they believed the Federal judge was wrong in his injunction and U.S. attorneys would not bring any contempt charges under that Federal injunction.

They told us that FACE was virtually useless, and other than extremely violent occurrences they would not get involved. One of the U.S. attorneys, Ms. Tina Nomay, told us she believed our best option would be to operate at a secret address like a battered woman's shelter so that no one would know where we were. So much for a commitment to FACE.

Our next meeting was with the FBI who said they were unfamiliar with anything and had only had information on the impending rescue for a week and would not be at the rescues at all.

Our next meeting was with the U.S. marshals office in Fort Wayne to request assistance for the doctor, Dr. Klopfer, who had been stalked for years and had active death threats against him which had been turned in to the FBI. The U.S. marshal informed us that since this doctor had in the past responded to protestors threatening him with sometimes obscene gestures he could not put his marshals in a position to watch him or protect him. He said the situation might be too volatile and dangerous for his marshals but, obviously, not too dangerous for the doctor to operate alone.

They have since told us—the U.S. marshals in meetings in Fort Wayne—they would not intervene in anything involving violence but would merely observe the violence. A question that was asked earlier today was, in fact, said to us in Fort Wayne by U.S. marshals.

We then met with the Fort Wayne chief of public safety who told us that he believed the FACE law to be worthless. He advised us that the only arrest his officers would be making if there was trouble was trespass or obstruction of justice—of traffic, sorry—and the crime of impeding rights at abortion clinics was unlike any other crime he had to deal with. He said his department would not make any arrest under FACE or the Federal injunction.

That afternoon I was told by a reporter with NBC in Fort Wayne, third hand, that the sheriff of Allen County had referred to the FACE law as no better than toilet paper, and she asked for my response to that.

By August 4, 9 o'clock, the Federal injunction had not been read. When we asked the police to read it we were told they could not find the injunction. We offered them a copy that we had inside the clinic. They refused it. At the time hundreds of protestors from five States were gathering in front of our clinic.

We were harassed and trespassed on that day and the next, and there were no arrests. So with both the FACE bill and a Federal injunction in place there was no enforcement of either. The doctor received written death threats subsequent to this rescue, and nothing has been done. Even with Federal marshals sitting in front of the Fort Wayne facility, there has been no enforcement of FACE or the Federal injunction.

This is where we are today. The dilemma is simple. We have been attacked and targeted for 10 years in Fargo, Fort Wayne, Pensacola, Mississippi and hundreds of other cities. Other crises come and go, and still abortion providers are under attack.

We cannot distinguish which protestors will shoot us and which ones will not. We cannot tell which death threats are real and which ones are not or which stalkers are violent and which are not. From inside a clinic they all look the same to us. They looked the same to Dr. Gunn, Dr. Britton and Mr. Barrett. We believe that the Justice Department needs to be firm and committed to the enforcement of FACE. We need FACE, and we need enforcement. We do not want to come back a third time for help to this committee.

We believe that women in North Dakota, Pensacola, and Mississippi deserve the same health care that women in New York and Washington have access to. But the road to providing these services, I can tell you personally, as Ms. Taggart and Dr. Klopfer can, is dangerous deadly and very lonely. We beseech you now to do everything possible to help us avoid a third visit back after a murder.

The provider community cannot withstand any more deaths. We will not be able to provide abortion services in rural areas if killings are not stopped. We need your help now.

Mr. SCHUMER. Thank you, Ms. Hill, and I want to thank all the witnesses for really outstanding testimony.

[The prepared statement of Ms. Hill follows:]

Susan Hill

I WANT TO THANK THE SUBCOMMITTEE FOR YOUR KIND INVITATION TO APPEAR FOR A SECOND TIME IN A HEARING CONCERNING THE FACE BILL. THE LAST TIME I WAS HERE WAS ON APRIL 1. 1993. TWO WEEKS AFTER A FRIEND AND COLLEAGUE, DAVID GUNN, HAD BEEN MURDERED IN PENSACOLA. AT THE TIME, I ASKED YOU TO RECOGNIZE THE VERY REAL THREAT WE WERE ALL FACING. THIS COMMITTEE DID SO, AND WITH A STRONG COMMITMENT ANSWERED OUR PRAYERS AND MOVED THE FACE BILL ONTO PASSAGE. ALL THROUGH THE DEBATE ON THE BILL, I CONTINUED TO QUESTION ONE ASPECT OF THE BILL, AND THAT WAS "ENFORCEMENT". I ASKED HERE AND IN OTHER SITUATIONS, WHO COULD WE EXPECT TO ENFORCE FACE: THE SAME LOCAL LAW ENFORCEMENT OFFICIALS WHO WOULD NOT ENFORCE FEDERAL INJUNCTIONS OR STATE LAWS; OR FEDERAL OFFICIALS, UNCOMFORTABLE WITH LOCAL LAW ENFORCEMENT PROBLEMS? WE CAME TO YOU FOR HELP BECAUSE WE HAD BEEN EVERYWHERE ELSE. YOU WERE OUR LAST RESORT.

NOW WE COME TO YOU AGAIN- TRAGICALLY, WITH TWO MORE COLLEAGUES MURDERED IN COLD BLOOD. SINCE DR. GUNN'S MURDER, WE HAVE BEEN CONFRONTED AND ATTACKED MORE VIOLENTLY THAN EVER. PROTESTORS STALK OUR PHYSICIANS, STAFF, AND PATIENTS, SLASH THEIR TIRES, VANDALIZE THEIR CARS, WRITE AND CALL IN DEATH THREATS. PROTESTORS ENJOINED FROM OUR CLINIC PROPERTY COME TO OUR HOMES AT THREE O'CLOCK IN THE MORNING TO WAKE US TO "COME OUTSIDE". THE FBI TAKES OUR DEATH THREATS, BUT TELLS US THEY CAN NOT REALLY INVESTIGATE. THE LOCALS TELL US THE FEDS SHOULD DO THIS; THE FEDS TELL US THE LOCAL

AUTHORITIES HAVE JURISDICTION.

AND SO WE SIT ONCE AGAIN, WITH A FEDERAL LAW, MUCH PUBLICIZED, AND NO ONE TO ENFORCE IT. BUT US. ONCE AGAIN, WE ARE TOLD BY ALL AUTHORITIES THAT WE MUST BE ATTACKED, FILE THE COMPLAINT, AND SEEK THE REMEDY WE ARE THE POLICE. AND PROSECUTOR ON THIS ONE CRIMINAL OFFENSE.

IN FORT WAYNE, INDIANA ON AUGUST 4-6, 1994, OUR CLINIC WAS THE SITE OF A NATIONAL OPERATION RESCUE. BECAUSE OF VICIOUS ATTACKS IN THE PAST FIFTEEN YEARS, FORT WAYNE WOMEN'S HEALTH ORGANIZATION (THE ONLY CLINIC FOR THREE HOURS ANY WAY) HAD OBTAINED, AT ITS OWN EXPENSE, A FEDERAL INJUNCTION WITH A BUFFER ZONE IN 1989, FROM A REPUBLICAN FEDERAL JUDGE. THE LOCAL AUTHORITIES WERE ORDERED BY THE JUDGE TO READ THE INJUNCTION EVERY MORNING, TO GIVE ADEQUATE NOTICE TO ALL PROTESTORS. FOR THE PAST EIGHT MONTHS, THE POLICE HAVE REFUSED TO READ THE INJUNCTION. IN OCTOBER, 1993, THERE WAS A BLOCKADE OF THE CLINIC, AND ELEVEN VIOLATORS OF THE INJUNCTION. THE U.S. ATTORNEY REFUSED TO BRING CONTEMPT CHARGES SAYING HE HAD NO JURISDICTION TO ENFORCE THIS INJUNCTION. U.S. MARSHALS REFUSED, UPON OUR REQUEST, TO COME NEAR THE CLINIC. THE LOCAL FORT WAYNE POLICE REFUSED TO ARREST UNDER THE INJUNCTION TO CHARGE CONTEMPT. ALL PARTIES SAID WE WOULD HAVE TO FILE CIVIL COMPLAINTS. THE JUSTICE DEPARTMENT TOLD US THEY COULD NOT HAVE U.S. ATTORNEYS ENFORCE FEDERAL INJUNCTIONS BROUGHT BY PRIVATE PARTIES.

PRIOR TO THIS AUGUST, 1994 RESCUE, WE MET WITH ALL LOCAL LAW

ENFORCEMENT OFFICIALS TO GET A LAY OF THE LAND.

ON AUGUST SECOND, WE MET WITH TWO DEPUTY U.S. ATTORNEYS IN FORT WAYNE WHO TOLD US THAT THEY BELIEVED THAT THE FEDERAL JUDGE WAS WRONG IN HIS INJUNCTION AND THAT U.S. ATTORNEYS WOULD NOT BRING ANY CONTEMPT CHARGES UNDER THAT FEDERAL INJUNCTION. THEY TOLD US THAT FACE WAS VIRTUALLY USELESS. AND THAT OTHER THAN EXTREMELY VIOLENT OCCURRENCES, THEY WOULD NOT GET INVOLVED. ONE OF THE U.S. ATTORNEYS, MS. TINA NOMAY, TOLD US THAT SHE BELIEVED OUR BEST OPTION WOULD BE TO OPERATE AT A SECRET ADDRESS, LIKE A BATTEPED WOMEN'S SHELTER, SO THAT NO ONE WOULD KNOW WHERE WE WERE. (SO MUCH FOR A COMMITMENT TO FACE)

OUR NEXT MEETING WAS WITH THE FBI, WHO SAID THEY WERE UNFAMILIAR WITH ANYTHING, AND HAD ONLY HAD INFORMATION ON THE IMPENDING RESCUE FOR A WEEK.

OUR NEXT MEETING WAS WITH THE U.S. MARSHAL, TO REQUEST ASSISTANCE FOR THE DOCTOR (WHO HAD BEEN STALKED FOR YEARS, AND HAD ACTIVE DEATH THREATS AGAINST HIM.) HE INFORMED US THAT SINCE THIS DOCTOR RESPONDED TO PROTESTORS THREATENING HIM, WITH SOMETIMES OBSCENE GESTURES, HE COULD NOT PUT HIS MARSHALS IN A POSITION TO WATCH HIM OR PROTECT HIM. HE SAID THE SITUATION MIGHT BE TOO VOLATILE AND DANGEROUS.

WE THEN MET WITH THE FORT WAYNE CHIEF OF PUBLIC SAFETY, WHO TOLD US THAT HE BELIEVED THE FACE LAW TO BE "WORTHLESS". HE

ADVISED US THAT THE ONLY ARRESTS HIS OFFICERS WOULD BE MAKING, IF THERE WAS TROUBLE, WAS TRESPASS OR OBSTRUCTION OF TRAFFIC, AND THE CRIME OF IMPEDED RIGHTS AT ABOPTION CLINICS WAS "UNLIKE ANY OTHER CRIME". HE SAID HIS DEPARTMENT WOULD NOT MAKE ANY ARRESTS UNDER FACE, OR THE FEDERAL INJUNCTION.

THAT AFTERNOON I WAS TOLD BY A REPORTER (NBC) THAT THE SHERIFF OF ALLEN COUNTY HAD REFERRED TO THE FACE LAW AS "NO BETTER THAN TOILET PAPER".

BY AUGUST FOURTH, NINE O'CLOCK, THE FEDERAL INJUNCTION HAD NOT BEEN READ. WHEN WE ASKED THE POLICE TO READ IT WE WERE TOLD THEY COULD NOT FIND IT. AT THE TIME HUNDREDS OF PROTESTORS FROM FIVE STATES WERE GATHERING IN FRONT OF OUR CLINIC.

WE WERE HARASSED AND TRESPASSED ON THAT DAY AND THE NEXT, AND THERE WERE NO ARRESTS. SO WITH BOTH A FACE BILL AND A FEDERAL INJUNCTION, THERE WAS NO ENFORCEMENT. THE DOCTOR RECEIVED WRITTEN DEATH THREATS SUBSEQUENT TO THAT. AND NOTHING HAS BEEN DONE. EVEN WITH FEDERAL MARSHALS SITTING IN FRONT OF THIS FACILITY, THERE WAS NO ENFORCEMENT.

THIS IS WHERE WE ARE. THE DILEMMA IS SIMPLE. WE HAVE BEEN ATTACKED, AND TARGETED FOR TEN YEARS, IN FARGO AND FORT WAYNE ESPECIALLY. OTHER CRISES COME AND GO, AND STILL ABORTION PROVIDERS ARE UNDER ATTACK. WE CAN NOT DISTINGUISH

WHICH PROTESTORS WILL SHOOT US AND WHICH ONES WILL NOT. WE CAN NOT TELL WHICH DEATH THREATS ARE REAL AND WHICH ARE NOT. OR WHICH STALKERS ARE VIOLENT AND WHICH ARE NOT. FROM INSIDE A CLINIC THEY ALL LOOK THE SAME TO US. THEY LOOKED THE SAME TO DR. GUNN, DR. BRITTON, AND JOHN BARRETT. WE BELIEVE THAT THE JUSTICE DEPARTMENT NEEDS TO BE FIRM AND COMMITTED TO ITS ENFORCEMENT OF FACE. WE NEED FACE, AND WE NEED ENFORCEMENT. WE DO NOT WANT TO COME BACK A THIRD TIME TO THIS COMMITTEE FOR HELP.

WE BELIEVE THAT WOMEN IN NORTH DAKOTA, PENSACOLA, AND MISSISSIPPI DESERVE THE SAME HEALTH CARE THAT WOMEN IN NEW YORK AND WASHINGTON HAVE ACCESS TO. BUT THE ROAD TO PROVIDING THESE SERVICES IS DANGEROUS, DEADLY AND LONELY. WE BESEECH YOU NOW TO DO EVERYTHING POSSIBLE TO HELP US AVOID A THIRD VISIT BACK AFTER A MURDER. THE PROVIDER COMMUNITY CAN NOT WITHSTAND ANY MORE DEATHS. WE WILL NOT BE ABLE TO PROVIDE ABORTION SERVICES IN RURAL AREAS IF KILLINGS ARE NOT STOPPED.

WE NEED YOUR HELP -NOW.

Mr. SCHUMER. Let me say, after hearing all of you, it is clear to me that the Justice Department must do better. I said that to Mr. Patrick and the Assistant Attorney General before, but this testimony makes it clear that for the FACE law to work, we are going to need more enforcement and more attention from justice.

Do we have a representative of Justice here? I will not ask you to come up and testify, but I want to make sure the import of the testimony of these four folks gets over to the Justice Department right away.

I am also going to be asking for written responses to what happened in each of the four instances that were brought up here.

Our goal is that what you have gone through for 10 years or 5 years or 6 years before does not happen after this law. And even given startup time and everything else, there is not adequate enforcement of this law at this point, and this subcommittee is going to do its best to see that that happens, because we desperately need it.

And it is clear, also, that we need not just personnel but we need educated personnel, because every one of you has run into Federal officials who were not really familiar with the law and not really willing to enforce the law.

Let me just ask you a couple of quick questions.

First have you seen the level of violence decrease at all since the FACE law was enacted?

Ms. Taggart says no.

Ms. HILL. No.

Mr. SCHUMER. Ms. Hill, no. Sergeant Walsh, no.

Dr. KLOPFER. No.

Mr. SCHUMER. And Dr. Klopfer, no.

I think your testimonies speak eloquently enough to the point that we want to make in this subcommittee, which is that the Justice Department has got to do better.

Well, I don't think we have anything else to say. You have answered it all. Thank you all for coming.

Ms. HILL. Thank you.

Mr. SCHUMER. And one thing I ask is that you stay in touch with this subcommittee and let us know, say in a month or two, if things have improved in your individual situations; OK? Thank you.

We have one final panel, and I think since we have a little time before the next vote and there are two votes we will call the next panel to begin their testimony now. Will panel three please come forward?

OK. Our third panel is made up of antiabortion activists. We always try to hear both sides here. And it is not I that have selected these folks; Mr. Sensenbrenner has. So it is not a stacked panel in any way.

First, we are going to hear from Sue Finn of the Priests for Life; second, we will hear from Pat Mahoney, formerly of Operation Rescue and now with the Christian Defense Coalition; and, finally, we will hear from Joseph Broadus. He is a professor at George Mason University in Virginia.

Like our previous panels, each of your statements will be read into the record. The previous panel did a pretty good job at sticking to the 5-minute limit, and I would ask you folks to do the same.

Mr. SCHUMER. Ms. Finn, you are on.

## STATEMENT OF SUSAN FINN, ADMINISTRATOR, PRIESTS FOR LIFE

Ms. FINN. OK. Thank you.

I would like to first begin by saying that I don't like to see the killing of any human beings, whether that be unborn children or women or abortionists or abortion providers.

Today, I would like to give a brief overview of how the FACE bill is negatively affecting the entire prolife movement, not just those on the extreme that have been violent, and how this bill is actually harming the pregnant women that it is intended to protect.

I have been involved in the prolife movement for the past 25 years, ever since my parents would bring my five brothers and sisters and I out to the local abortion clinic to pray and picket while my mother would offer alternatives to women arriving for abortions.

I have worked full time in the prolife movement for the past 7 years and have acquired an indepth understanding of prolife work and the people that make up the prolife movement.

I have worked on crisis pregnancy hotlines. I have worked in crisis pregnancy centers. I have lived in a home for women in crisis pregnancies as the evening supervisor. I have been involved in education. And I have also been out to abortion clinics on numerous occasions to offer alternatives to women in crisis pregnancies.

The prolife movement has an extensive network across the Nation of more than 3,500 helping centers, in addition to the resources offered through the churches. The types of help available to any woman in a crisis pregnancy are food, housing, clothing, financial aid, job training, schooling and counseling. We also offer counseling and healing for women who have had abortions.

Currently, I am the administrator of Priests for Life, which is a national Catholic prolife organization currently reaching 30,000 Catholic priests on a regular basis with updates and resources on how to assist women in crisis pregnancies. We encourage them to teach and preach on the sanctity of all human life and to become more active in stopping abortion by helping women in need.

From my experience, I know the prolife movement. I know the people and their reasons for being in this movement. And in my years of experience I have known the prolife movement to be peaceful and made up of committed, concerned people believing that violence is wrong.

As pro lifers, we believe that all human life is sacred, that of the babies, the moms, the dads, and those who work in the abortion industry. Our goal is to help all of these different people so their hearts will be changed and they can love the unborn child and not try to kill the unborn child.

Our primary concern and motivation is twofold, those of us that are in the prolife movement. First, we have a concern for the life of the child. In the early 1970's, we could not see inside the womb when abortion became legal. We could not see the child. But medical technology has advanced, and today we can literally see inside the womb. We know at just 3 weeks after conception every child

has a beating heart. We know just 6 weeks after conception every human child has brain waves.

The medical community recognizes that what is in the womb is a human being, and even the prochoice movement, many abortionists, many leaders of the prochoice movement, will admit to us, yes, it is a human being, but we have the right to kill this human being if we so choose.

Aside from the child, we have an equal concern for the mother and what she will go through after having an abortion. There are many serious side effects from abortion, especially because the abortion industry is widely unregulated at the city, State and Federal levels.

At my office, I have a stack of reports a foot high about women who have been seriously hurt, physically and psychologically, by abortion.

I have testimonies by ex-abortionists who say they did not sterilize the instruments between abortions because they did not want to take the time and limit the number of abortions they could perform in a particular day. They say—ex-abortionists say they were in the business of selling abortions to women and did not offer them alternatives because abortion is a business for profit.

I have a file box—two file boxes—of death certificates and medical reports depicting the grotesque details of the deaths of women who have been killed by legal abortion. Although the chances for an individual woman to suffer physical harm from abortion is now less, the actual number of women suffering such harm is much greater than before legalization because of the tenfold to fifteenfold increase in the numbers of abortions performed.

Yes, we have a legitimate concern for women facing crisis pregnancies, and the only way women will hear about the serious risks involved in abortion is by people who are not making a buck from their abortions. It is a crime to have an unregulated industry yet prevent women from hearing about these alternatives.

Mr. SCHUMER. I am going to have to go vote in about 3 minutes. So if you will sum up.

Ms. FINN. From my experience, we know that women do want our services from the prolife movement. There are tens of thousands of women who have changed their minds after talking to prolife counselors in front of abortion clinics. These are women thankful they did not go through with the abortion and thankful that their babies are alive.

In turn, we know of many women who say why wasn't anyone in front of the abortion clinic to offer me alternatives before my abortion?

There are thousands of peaceful pro lifers who want to offer resources to pregnant women walking into abortion clinics. Yet already across our country the FACE bill is intimidating legitimate, peaceful pro lifers from offering help to these women. You say the bill was not intended to obstruct peaceful protest, but that is what it is doing.

Many prayer groups, rosary vigils and sidewalk counselors believe they can no longer go to the clinics. Proabortion advocates in many media are spreading false reports that if pro lifers go out to abortion clinics they will be arrested and thrown in Federal prison.

Even people working in crisis pregnancy centers fear this bill, not knowing how the Government may interpret it or enforce it. And the women are the ones who suffer because they continue to believe that laying on a table and having their babies dismembered and sucked from their wombs is their only choice.

All along, I have experienced peaceful solutions put forth from the prolife movement. You have seen violence escalate when the Government started to crack down on peaceful protests. President Kennedy said if you make peaceful protest impossible, you make violent protest inevitable. And I ask you to please do not further participate in the protection of an industry that is killing unborn children, killing moms and killing the soul and heart of our Nation.

Mr. SCHUMER. OK, thank you, Ms. Finn.

We are going to have two votes now, so we will have to take a slightly longer break. I assume I will be back here between 5 of 2 and 2 o'clock. We are recessed.

[Recess.]

[The prepared statement of Ms. Finn follows:]

## Judiciary Oversight Hearing Testimony by Susan Finn September 22, 1994

I've been involved in the pro-life movement for the past 25 years, ever since my parents would bring me and my five brothers and sisters out to the local abortion clinic in Los Angeles to pray and picket while my mother would offer alternatives to the women arriving for abortions.

### **My Experience In The Pro-life Movement**

I have worked full-time in the pro-life movement for the past 7 years, and have acquired an in-depth understanding of pro-life work and the people who make up the pro-life movement.

I've worked on a crisis pregnancy hotline and at a crisis pregnancy center offering help and alternatives to pregnant women. I lived in a shelter for pregnant women as the evening supervisor. And I've gone out to many abortion clinics to offer alternatives to women -- women who feel they have no other choice but abortion.

### **The Pro-life Movement Offers Help To Women**

The pro-life movement has an extensive network across the nation of more than 3,500 helping centers, in addition to the resources offered through the churches. The types of help available to any woman are food, housing, clothing, financial aid, medical assistance, job training, schooling, and counseling. In addition, we offer counseling and healing for women who have had abortions.

Currently, I am the Administrator of Priests for Life, a national Catholic organization reaching 30,000 priests across the nation with regular updates and resources about how to assist women in crisis pregnancies.

### **We Are Committed To Peaceful Intervention**

I know the pro-life movement. I know the people and their reasons for being in this movement. In my years of experience, I have known the pro-life movement to be peaceful.

As pro-lifers, we believe that all human life is sacred, that of the babies, the moms, the dads, and those who work in the abortion industry. Our goal is to help all of these different people, so their hearts will change and they can love the unborn child.

It is very important that we pro-lifers be able to continue to offer help to the 4,500 women arriving at abortion clinics each day.

**Our Concern For The Child . . .  
Because Abortion Is Deadly**

Of course we have a concern for the life of the child. In the early 70's we couldn't see inside the womb. But medical technology has advanced. We can now see the child in the womb. At just three weeks after conception the child has a beating heart. At six weeks, the child has brain waves.

The medical community admits that it is a human being in the womb. And even the pro-choice movement now admits it is a human being, but that they have a right to kill that human being.

**Our Concern For The Mom . . .  
Because Abortion Hurts Women**

Aside from the child, we have an equal concern for the mother and what she will go through after having an abortion. There are many serious side-effects, because the abortion industry is widely unregulated at the city, state, and federal levels.

At my office I have a stack of reports, a foot high, about women who have been seriously hurt physically and psychologically by abortion.

I have testimonies by ex-abortionists who say they didn't sterilize the instruments between abortions, because they didn't want to take the time and limit the number of abortions they could perform in a day. They say they were in the business of "selling" abortions to women, and didn't offer them other alternatives, because abortion is a business for profit.

I have two boxes of death certificates and medical reports depicting the grotesque details of the deaths of women who have been killed by legal abortion.

Although the chances for an individual woman to suffer physical harm from abortion is now less, the actual number of women suffering such harm is much greater than before legalization, because of the 10 to 15-fold increase in the numbers of abortions performed.

Yes, we have a legitimate concern for women facing crisis pregnancies.

And the only way women will hear about the serious risks involved in abortion is by people who aren't making a "buck" from their abortions. It's a crime to have an unregulated industry, yet prevent women from hearing about the alternatives.

And the women most in need of these alternatives are those that are actually walking into the clinic. These are the women who feel they have no other choice.

The vast majority of abortions are not a matter of choice for the woman, either because she is pressured, coerced, strongly ambivalent, or uninformed about alternatives.

### **Women Want And Need Our Services Offered To Them In Front Of Abortion Clinics**

From experience, we know that many women do want our services. There are tens of thousands of women who have changed their minds after talking to pro-life counselors in front of abortion clinics. These are women thankful that they didn't go through with the abortions, and that their babies are alive.

In turn, I know of many women who say, "Why wasn't anyone out in front of the clinic to offer me alternatives before I had my abortion?"

### **Abortion Alternatives Are Being Suppressed**

There are thousands of peaceful pro-lifers who want to offer resources to pregnant women walking into abortion clinics. Yet, already across our country, the FACE bill is intimidating legitimate, peaceful pro-lifers from offering help to these women.

Many prayer groups, rosary vigils, and counselors believe they can no longer go to the clinics. Pro-abortion advocates and media are spreading false reports that if pro-lifers go out to abortion clinics they'll be arrested and thrown in federal prison.

And the women are the ones who suffer, because they continue to believe that laying on a table and having their babies dismembered and sucked from their wombs is the only choice.

All along, I have experienced peaceful solutions put forth in the pro-life movement. We believe in the sanctity of life and want to use loving solutions to stop the killing of unborn children and the exploitation of women by the abortion industry.

We in the pro-life movement will continue to love these women and children. My heart will continue to go out to abortionists and those who somehow have been deceived into killing unborn children as a way of making a living. I, along with millions of other pro-lifers, will continue to pray for and work for an end to the killing of unborn children in this land.

And I ask you, to please, do not participate in protecting an industry that is killing children, hurting women, hurting men, and killing the soul of our country. Thank you.

XXX

Mr. SCHUMER. The hearing will come to order.

I want to apologize to the witnesses and everybody else. The motion to recommit, which is a technical procedural motion, passed, and they made us hang around on the floor trying to figure out what to do for a little while.

Anyway, our next witness will be Reverend Mahoney. Your entire statement will be read into the record. You may proceed as you wish.

#### **STATEMENT OF REV. PATRICK J. MAHONEY, CHRISTIAN DEFENSE COALITION**

Reverend MAHONEY. I would like to thank the committee for the opportunity to speak here today concerning the Freedom of Access to Clinic Entrances Act or FACE. I spoke before this same committee last spring and expressed serious concerns about this particular piece of legislation and the negative impact it would have on the prolife community.

Supporters of FACE gave assurances and promises to the American public that this would be a fair and effective bill. They first promised that FACE would reduce violence at abortion clinics and protect clinic personnel. Supporters also gave assurances that the rights and freedoms of prolife demonstrators would not be hindered or restricted by final passage.

Sadly, both of these promises have proven to be empty and shallow. FACE is a complete and utter failure only months after it was passed by Congress and signed by the President.

That truth hits home when one realizes the worst act of violence against abortion clinic workers took place after the passage of this bill. FACE, in spite of all the promises to the contrary, has been used to intimidate and harass peaceful prolife demonstrators across the country.

I would first like to deal with the myth that FACE or any Federal legislation can protect abortion clinics. The prolife movement consists of millions of caring citizens who believe that abortion is the tragic destruction of innocent human life. We feel it is our moral and spiritual duty to peacefully intervene to protect that life.

That intervention involves praying the rosary, holding signs, singing, sidewalk counseling, literature distribution and nonviolent civil disobedience. Our movement has always condemned violence as immoral and a betrayal of our principles. The record clearly shows that the vast majority of the prolife community have been peaceful and nonviolent.

Abortion rights groups and some Members of Congress have made malicious and unfounded charges that this is a violent movement which is engaged in a nationwide conspiracy of terrorism. They have taken the violent acts of a handful of individuals and attempted to portray every prolife person in that negative light.

The truth is the BATF did a 10-year investigation of 150 arsons at abortion clinics and found—and I am quoting—there is no nationwide conspiracy.

I just talked to Mr. Brown on his way out and said, Mr. Brown, would it be fair to say that the ATF, after all their investigations, have determined that there is not a conspiracy among the prolife community? And he said that would be fair to say. I think it is

much more credible to believe the FBI, the BATF, rather than Planned Parenthood, the Fund for Feminism, and the majority of the National Organization for Women.

Federal legislation could not have protected David Gunn, and current legislation did not protect John Britton nor James Barrett. Their lives were taken by individuals who acted alone and violated the heart of the prolife movement and participated in an immoral and violent act. And I want to say this clearly: A thousand Federal laws cannot protect individuals from the actions of a lone ranger vigilante.

In light of this, supporters of FACE commit a cruel hoax on the American public by stating this bill will reduce violence. Taxpayer time and money is being wasted so politicians can score points with special interest groups. The three abortion providers here, Mr. Schumer, just said today that violence has increased since the passage of this bill because Federal legislation is not the answer.

There are some here today who would say the bill should be expanded and the Federal Government should have more authority, Members who want more investigations and more restrictions. In other words, let us waste more tax dollars and accomplish nothing.

The second point. Mr. Schumer and other supporters of FACE went to great lengths to assure the prolife movement that free speech rights would not be assaulted as a result of the passage of this law. That assurance has again demonstrated itself to be empty and hollow. There have been numerous episodes of intimidation, harassment and discrimination against peaceful demonstrators by law enforcement because of this bill.

Some examples: Federal marshals around the country are taking photographs of peaceful demonstrators at clinics, taking down license plate numbers of demonstrators. A Federal marshal in Washington pushed and shoved a peaceful activist here right in the district. That person has signed an affidavit against that marshal, and it is part of a lawsuit against the Attorney General, which is the only one still alive which I am a plaintiff on.

I was in Fort Wayne, IN, where Ms. Hill is from. I was at a demonstration—I will talk really fast right now. I was at a demonstration—

Mr. SCHUMER. I am from New York. I will not have trouble understanding.

Reverend MAHONEY. Great, I am from New Jersey. I won't hold that against you but don't hold New Jersey against me.

The family there was afraid to go out to the demonstration because of the fact that their license plate numbers may be taken down and their pictures might have been taken.

So it is one thing to sit here and say, oh, look, we do not intend this bill to hurt free speech, but, Congressman Schumer, it is.

This bill is nothing more than an attempt to suppress and hinder legitimate first amendment activities. FACE is not about stopping violence but rather about stopping the prolife message.

One more paragraph. Actually, one and a half.

Violence is something that darkens and stains the soul of America. People of justice and mercy must do all within their power to see that the bloodshed on the streets of America comes to an end. We must work to eliminate all forms of violence. That would in-

clude the shooting of an 11-year-old boy on the streets of Chicago, the beating of Rosa Parks in her home in Detroit, the shooting of a doctor and his escort in Pensacola, FL, and the deaths of 8,400 children daily in abortion clinics.

I implore this committee not to engage in political games or self-serving policies. Now is the time to participate in serious debate and dialog to find real solutions.

I will close by suggesting an excellent first step which would be to repeal the failed Freedom of Access to Clinic Entrances Act and develop strategies that will truly end the violence. Thank you.

Mr. SCHUMER. OK. Thank you, Reverend Mahoney.

[The prepared statement of Reverend Mahoney follows:]

JUDICIARY OVERSIGHT HEARING  
TESTIMONY OF REV. PATRICK J. MAHONEY  
SEPTEMBER 22, 1994

I would like to thank the Judiciary Committee for the opportunity to speak here today concerning The Freedom of Access to Clinic Entrances Act. (FACE) I spoke before this same committee last spring and expressed serious concerns about this particular piece of legislation and the negative impact it would have on the pro-life community. Supporters of FACE gave assurances and promises to the American public that this would be a fair and effective Bill.

They first promised that FACE would reduce violence at abortion clinics and protect clinic personnel. Supporters also gave assurances that the rights and freedoms of pro-life demonstrators would not be hindered or restricted by final passage. Sadly, both of these promises have proven to be empty and shallow. FACE is a complete and utter failure only months after it was signed by the President.

That truth hits home when one realizes the worst act of violence against abortion clinic workers took place after the passage of the Bill. FACE, in spite of all the promises to the contrary, has also been used to intimidate, and harass peaceful pro-life demonstrators across the country.

I will first deal with the myth that FACE, or any federal legislation, can protect abortion clinics. The pro-life movement consists of millions of caring citizens who believe that abortion is the tragic destruction of innocent human life. We feel it is our moral and spiritual duty to peacefully intervene to protect that life. That intervention involves: praying the rosary, holding signs, singing, sidewalk counseling, literature distribution, and non-violent civil disobedience. Our movement has always condemned violence as immoral

and a betrayal of our principles. The record clearly shows that the vast majority of the pro-life community have been peaceful and non-violent.

Abortion rights groups, and some members of Congress, have made malicious and unfounded charges that this is a violent movement which is engaged in a nationwide conspiracy of terrorism. They have taken the violent acts of a handful of individuals and attempted to portray every pro-life person in that negative light. The truth is the BATF did a ten year investigation of 150 arsons at abortion clinics and found "there is no nationwide conspiracy" and individuals acted alone.

The truth is that federal legislation could not have protected David Gunn and current legislation did not protect John Britton or James Barrett. Their lives were taken by individuals who acted alone and violated the heart of the pro-life movement and participated in an immoral and violent act. A thousand federal laws cannot protect individuals from the actions of a Lone Ranger vigilante.

In light of this, supporters of FACE commit a cruel hoax on the American public by stating this Bill will reduce violence. Taxpayer time and money is being wasted so politicians can score points with special interest groups. It is also a terrible waste of Federal Law Enforcement resources.

There are some here today who would say the Bill should be expanded and the Federal government should have more authority. Members want more investigations and more restrictions. In other words, let's waste more tax dollars to accomplish nothing.

Mr. Schumer, and other supporters of FACE, went to great lengths to assure the pro-life movement that free speech rights would not be assaulted as a result of passage. That assurance has once again demonstrated itself to be empty. There have been numerous episodes of intimidation, harassment, and discrimination against peaceful demonstrators by law enforcement because of this Bill. Some example include:

- \* Federal Marshals photographing and taking down the license plate numbers of peaceful pro-life demonstrators at abortion clinics.

- \* A Federal Marshal pushing and shoving a peaceful activist in Washington D.C. That person has signed an affidavit against that Marshal and it is part of a lawsuit against the Attorney General.
- \* A minister was arrested in Des Moines by Federal authorities for simply demonstrating at a clinic.
- \* The Brown family did not go out and pray at an abortion clinic in Fort Wayne because they were afraid they would be photographed and have their license plates taken down and investigated.

This Bill is nothing more than an attempt by abortion rights supporters to suppress and hinder legitimate First Amendment activities by pro-life activists. FACE is not about stopping violence, but rather about stopping the pro-life message from being heard in front of abortion clinics.

Violence is something that darkens and stains the soul of America. People of justice and mercy must do all within their power to see that bloodshed on the streets of America comes to an end. We must work to end all forms of violence. That would include: the shooting of an 11 year boy on the streets of Chicago, the beating of Rosa Parks in Detroit, the shooting of an abortion doctor and his escort in Pensacola, and the deaths of 4,400 children daily at abortion clinics across America.

I implore this committee not to engage in political games or self-serving policies concerning this issue. Now is the time to participate in serious debate and dialogue to find real solutions. I will close by suggesting an excellent first step would be to repeal the failed Freedom of Access to Clinic Entrances Act and develop strategies that will truly end violence.

Mr. SCHUMER. Professor Broadus.

**STATEMENT OF JOSEPH E. BROADUS, PROFESSOR, GEORGE MASON UNIVERSITY SCHOOL OF LAW**

Mr. BROADUS. Thank you. I would like to start, if I may, by thanking—

Mr. SCHUMER. Pull the microphone closer.

Mr. BROADUS [continuing]. Thanking the committee for inviting me here, giving me this opportunity speak and by making a small correction. The chairman characterized me as a prolife activist. I believe if I have been active in anything it has been in defense of the first amendment, either through writing or through litigation; and my concern with FACE has been with concerns of its first amendment consequences.

I notice that we have observed today some sort of contradictory things, and one was the boast of the Justice Department that it had prevailed in litigation again and again. And the second thing was that it had to proceed very cautiously with FACE for fear of transgressing first amendment considerations. Now, if those victories are so astounding why is the Justice Department being so cautious? And I think the answer is that the only way that FACE was upheld by those courts was essentially by being rewritten almost to the effect that it could not be recognized. And perhaps some of those same judges who found their version of FACE nonoffensive would find it offensive if it were prosecuted consistent with its own language.

And I will give you an example of one of the—several examples of some of the problems that may exist for FACE and may create problems for local prosecutors and cause them not to want to become involved with this legislation and create for them a situation where they would not want to be in the business that the Justice Department has not committed itself to; that is to give FACE some reasonable limitations so that they could be certain that it was constitutional while not accepting the strong limitations that imposes in a constitutional reading by the cases they have been the victors in.

Let me give you an example. One of the prospects, for example, the interpretation of the term intimidate that appears in FACE. It means to place a person in reasonable apprehension of bodily harm to him or herself or to another.

Now, that seems reasonably straightforward because the initial facial portion of the language seems to suggest a threat simply indicated in the term to intimidate. But, unfortunately, the language Justice read could sweep to reach all kinds of innocent conduct and communication. And while it is not likely that many of the professional prosecutors in the Justice Department would use it that way, when confronted with the open-endedness of the provision, who would want to attempt to prosecute under it unless they have to?

Let me give you examples of a problem you could have with the language because it does not require intent and it only requires an effect, and the effect being apprehension of bodily harm.

Assume for a moment we have a prolife activist in Florida who engages in the practice of keeping track of the medical histories of

doctors who are involved in the process of performing abortions. There are disciplines before medical boards and other kind of activities that they are engaged in. If you should inform someone of this kind of record and they should suddenly feel that it was a dangerous matter to have a procedure by this doctor, have you intimidated them to the sense that you have placed them in a reasonable apprehension of injury?

Now, surely it could have been no one's intention to have prohibited that communication. Or was it? It does meet the requirements, since there is an intent requirement and since there is a requirement that you be involved in causing the injury.

The same thing is the problem with the term to interfere with. If you recall from Mr. Patrick's statement, he said that, gee, that they had not defined the level of movement that had to be transgressed, forward movement that had to be stopped, in order to constitute a violation of FACE. And that was one of the problems that was—that creates one of the constitutional problems. Because he said it has to be a significant interference, which seems to me a good, prudential standard to avoid problems, but that language is not necessarily in FACE. It is a reasonable and good-faith effort to limit FACE by imposing the requirement that it be significant.

But he did concede by his statement, I believe, that almost any delay, even occasioned by purely free speech activity, might be sufficient enough to facially trigger FACE. And that would be a serious constitutional problem, and it would be one that prosecutors would be concerned with.

Mr. SCHUMER. OK. Thank you, Professor Broadus.  
[The prepared statement of Mr. Broadus follows:]

The Statement of  
Professor Joseph E. Broadus  
George Mason University  
School of Law  
Before the Subcommittee on Crime and Criminal Justice,  
of the House Judiciary Committee  
Concerning Constitutional Implications of  
the Application of FACE (Freedom of Access to  
Clinic Entrances )  
September 22, 1994

Mr. Chairman, First I wish to thank the Committee for the opportunity to appear here today and to share my views on the constitutional implications concerning implementation of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. Sec. 248 ( FACE ).

The tendency in addressing problems of constitutional safeguards is frequently to view the process as a technical exercise identifying an interest and the appropriate analysis. The rest may be mistaken for intellectual clockwork. The real task is more demanding. It is the problem of assessing the impact of government regulation on the freedom of the people and our prospects for good government.

Seldom are these concerns as sharp as when the twin interests of freedom of religion and of speech safeguarded by the first amendment are present in a controversy. On the personal freedom ledger, the real issue presented by FACE is whether in some significant way it burdens the spiritual lives of Americans without a countervailing social gain. The question from the

political or free speech side is whether this law permits the government to employ the great weight of its bureaucratic processes to crush critics of a policy popular in powerful circles but less so among some significant segment of the people.

Two key aspects of our traditions and shared public life are put at issue by FACE. Our tradition of robust public discussion, including a generous toleration for the disruptions occasioned by civil disobedience ; and our deep rooted distrust of governmental over reaching and censorship.

Proponents of FACE have argued that it is a narrowly targeted criminal provision designed to address the serious problem of growing violence associated with abortion clinic protests. This view clashes sharply with that of opponents who charge that FACE's true intent is to silence critics of unpopular policies by imposing draconian penalties that entrap violent and non-violent conduct burdening social and political process.

I must add my voice to those who see in FACE a very disturbing trend. A ruling elite determined not to engage in debate but to impose political correctness through the use of coercive civil or criminal sanctions. This process is one that undermines not only individual freedom but reduces the prospects for good government.

Because of the relative newness of this statute analysis must be either facial or depend upon an evaluation of the political environment that produced FACE and of other similar trends visible and of concern. Even a facial reading appropriately informed in the total circumstances of FACE's enactment raises serious questions as to whether the provision could ever contribute to its stated objective.

The key constitutional questions concerning FACE are: 1.) Whether FACE proscribes constitutionally protected speech or expressive activities; 2.) Whether FACE imposes content-based restrictions on protected speech or expressive activities; 3.) Whether face is constitutionally vague or over broad. A second set of questions relate to special consideration produce by the requirements of the Religious Freedom Restoration Act, 42 U.S.C. 2000bb, et. seq.

#### **The Religious Freedom Restoration Act**

The Religious Freedom Restoration Act, 42 U.S.C. Sec. 2000bb, et. seq. was enacted by Congress in order to reverse the U.S. Supreme Court's holding **Employment Division v. Smith**, 494 U.S. 872 (1990). **Smith** had displaced the compelling state interest test and permitted legislatures to freely enact laws which had serious adverse impact on religious freedom as long as the measures were not enacted with the specific purpose of wounding religion.

In enacting RFRA, Congress proposed to instruct the courts to return to the older practice of reviewing impact claims under the compelling state interest test. This requires that the state both have a compelling interest for legislation, and that the method elected be narrowly crafted to achieve the objective. RFRA applied to all subsequently enacted federal statutes unless Congress explicitly excludes the provision from coverage. 42 U.S.C. 2000bb-3 (b).

#### Language Problems

FACE's language has been described as a mix of the worst features of a series of other civil and criminal provisions. The language over reaches to chill protected activities. Recent court decisions suggest the courts may limit these prospects. However, the same decisions can be read to suggest that the courts are insensitive to serious First Amendment problems

In *Riley v. Reno*, CIV-94-1058-PHX-RGS, 1994 U.S. Dist. LEXIS 11463, the court rejected a claim that FACE violated REFRA. But in the process the court demonstrated the massive insensitivity to free exercise that REFRA was intended to redress.

The court held that the plaintiff had failed to set out a claim under REFRA because they had not argued that their religion advocates the use of force or threats of force or physical obstruction of a clinic. In addition, Judge Strand held that

without analysis that FACE both was supported by a compelling state interest and was narrowly crafted.

The court failed to give adequate weight to the fact that the expressive conduct at issue was motivated by deeply held moral and religious convictions concerning abortion. The case was rear in that Judge Strand appears to be perhaps the only judge or perhaps person in America unaware of the nexus between religious belief and practice and pro-life protest.

Riley appears to require that the tenets of a particular creed be identified as the motivating factor. This, however, is itself an overly narrow reading of first amendment law. It was only necessary to identify conduct that was motivated by some sincerely held set of central moral beliefs that motivated the contested conduct.

Once that link between prohibited action and religion is established the court should be obligated to examine the appropriateness of the methods employed by the statute; and the impact of the state's chosen method on religious practice. This require both analysis and balancing of interest with a very heavy burden imposed on the state.

Perhaps, the key question under FACE is not whether the state can impose some penalty on religiously motivated conduct but whether it can impose a disproportionate penalty on conduct

which is largely expressive. RFRA may be seen to have the effect of not only limiting the state's substantive ability to regulate religiously motivated conduct but to impose special limits on the ability of the state to impose a limit on the penalties that may be imposed for religiously motivated conduct.

Judge Strand fails to analyze separately the issues of whether the impact of the penalties under FACE is to impose an impermissible burden religious practice. Part of the problem is that Judge Strand appears confused over the proper relationship between the Commerce Clause and the First Amendment. He assumes both in his analysis of RFRA and the speech claims that if Congress has sufficient interest to facially regulate under the Commerce Clause than the other interest should be subordinated. He cites no authority for this proposition and it is without basis. To the contrary where the exercise of the Commerce power creates substantial First Amendment questions it is the validity of the Commerce exercise that becomes suspect. See: *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. Constr. Trades Council*, 485 U.S. 568 (1988).

The issues here are those relating to civil disobedience. It is a well respected form of protest and one which over time has served to advance the moral sensibility of the nation. It has been our continuing and enlightened practice to impose primarily pro forma penalties on expressive violations of the law motivated

by deeply held moral convictions and presenting little more than petty obstructions. Many of the acts made serious offenses by FACE would otherwise be treated in this manner.

The harshness of FACE in light of the generosity of the prevailing practice raises questions as to both the purpose and effect of the law. Does FACE reflect hostility to the underlying religious views of protestors by use of disproportionate penalties.

**The Legislative Process Concerns:**

Face has long been a center of controversy. This is witnessed by the debate surrounding its enactment and the litigation which is now working its way through the federal courts. Already, FACE has survived challenges to its constitutionality at least five times in federal district courts. The pattern of these holdings should not suggest that the constitutional future of FACE is certain. In the past sensitive legislation dealing with the complex mix of abortion and religious freedom have frequently been struck down by lower courts only to be revived by the Supreme Court. This was true of legislation limiting federal funding for abortion, and it was true of legislation permitting the participation of religious institutions in programs designed to deter teen pregnancies.

The nexus of these issues abortion, politics, and religion appear to have repeatedly produced something of a judgmental and analytical breakdown within the judicial system. The First amendment paradigms simply have not informed the lower courts sufficiently to avert the problems they are intended to prevent.

This problem is heightened with FACE where courts must consider the facial validity of a statute rather than the statute as applied. Stripped of the critical incidents that might serve as a real world reference for the judge the review process of interpretation becomes little more than a litmus revealing the judges preferences for the underlying policy advanced by the statute.

This problem becomes even more intense in the Age of Smith, a period during which the court has abdicated critical parts of its function in defending First Amendment constitutional rights to the legislatures. Both the responsibility imposed by Smith, and the lengthy history of confusion surrounding these issues suggest both a special need for restraint on the part of legislatures when approaching these complex issues and an extra measure of

discipline when considering safe guards for both free exercise and speech.

Sadly, the legislative history of FACE suggest that Congress, may have defaulted under the conflicting pressure of agitated constituents and the dual legislative and judicial role imposed under Smith. The episode demonstrates the wisdom of the framers in crafting a Constitution that left a principle portion of the burden for defense to courts detached from the pressures and passions of immediate political controversy.

The present review of the administration of FACE gives Congress the needed opportunity to review the Constitutional issues raised during the earlier consideration. Hopefully, with the benefit of additional time and perhaps greater detachment Congress may give this matter the mature reflection it deserves.

Mr. SCHUMER. All right, well, I guess I would just make a few points.

You know—Professor Broadus, you know the doctrine when first amendment issues are at stake. The court is compelled to interpret them in the way that most protects free speech. All your hypotheticals—which I do not buy—the court would not interpret that way.

You are also ignoring another part of the statute, which I am trying to find right here. Nothing in this section shall be construed to prohibit any expressive conduct, including peaceful picketing or other peaceful demonstration protected from legal prohibition by the first amendment.

So I would just say, in reference to your testimony, let us wait and see if any single court anywhere in America has any kind of interpretation even close to your hypotheticals.

Mr. BROADUS. But I do not think—

Mr. SCHUMER. I doubt even the prosecutors would bring a case. You heard what Mr. Patrick said.

Mr. BROADUS. Of course. But what it creates for some prosecutors, given that the language is so broad, is who should be responsible for the process of defining or having guidelines to defend the appropriate ranges.

Mr. SCHUMER. That would work to your favor, Professor Broadus. That would make a very narrow construction of FACE.

Mr. BROADUS. But the problem is the chilling effect for the present, who are not familiar with this in the interim.

Mr. SCHUMER. OK, that brings me to the real point here, which is, as Ms. Finn stated explicitly and as Reverend Mahoney stated explicitly, and as you stated implicitly, many have been chilled from exercising their rights to free speech. The bottom line is they have no reason to be chilled. Not a single word of the act, not a single act of any person in the Federal Government has imposed on those rights.

Reverend MAHONEY. You are wrong, sir.

Mr. SCHUMER. Please let me finish, Reverend Mahoney.

Reverend MAHONEY. Certainly, sorry.

Mr. SCHUMER. Thank you.

That is the bottom line here. Here we have people being shot, people being intimidated. Reverend Mahoney objects to pictures being taken and license plate numbers being taken down when the prolife movement uses that technique day in and day out. What is good for the goose is good for the gander here. But that is not my point. Those are legitimate activities, whether it be for law enforcement or people exercising free speech.

That is not what this act is about. There has not been, frankly, one scintilla of evidence that the Federal Government has even tried, let alone succeeded, in impinging on anyone's free speech rights. That is explicit in the legislation. That is explicit in the testimony of Mr. Patrick and Ms. Harris.

So what I would say to you particularly, Ms. Finn, who represents a group, you can spread the word to your people, is as long as they do not blockade, as long as they do not use force, as long as they do not use violence, then, quite simply, this act will not apply.

And I defy anybody to show me a single person, a specific case where someone was peacefully protesting and has had the weight of law come down on them.

Now, one case you mentioned, Reverend Mahoney, is some marshal physically abused some person. Let us wait and see what happens in the courts as a result of that. There are lots of cases where law enforcement exceeds the bounds of a law. If we find that in a murder case the police went too far and took a defendant or a potential defendant and used physical force against him, we would not say repeal the laws of murder. Same thing here.

I am vigilant about this. I have not seen a single case where actual free speech without violence, without intimidation has even been attempted to be prosecuted under this law. If you find some, I would look at them.

But I do not believe we can speak in generalities, when on the other side we have the specifics of violence, which all three of you condemn. And I believe, for one, as I have said in every hearing, that most of the prolife movement is different than those who are violent. If there were people on the prochoice side who were being violent against the types of clinics you talked about, Ms. Finn, and local law enforcement would not enforce the rules at all, I would pass the same act. In fact, this act would apply to that.

In other words, this act is neutral. We designed it that way so that if that hypothetical were to evolve, FACE would apply. But it seems to me unfair and—maybe not from the three of you but from some others—disingenuous to say, well, somewhere out there someone totally misinterpreting the FACE law might be chilled, therefore, we should repeal it and allow the kinds of horrible things that happened.

You heard the four witnesses, and two or three of you condemned the kinds of actions used against them. That is all. What has happened here is that everyone has their beliefs. I have my strong beliefs, you have your strong beliefs, but a few people, the extremists, have said they are morally superior to the laws of this land.

That has happened in the past. And every time government representing the people has said we cannot allow that to happen. Because if one person believes his or her morality supersedes the laws of this land then every person can.

What we are doing with FACE is what America is all about, which is very simply saying that the laws of the land prevail and if you do not like them, we have plenty of means in this country, thank God, to change those laws, whether through the democratic process, like here, whether through peaceful protest, whether through education.

We are going to fight to keep those. But we are not going to allow those people who believe that moral superiority allows them to use violence and take away other people's life to prevail.

Reverend Mahoney, you wanted to say something. That is all I have to say.

Reverend MAHONEY. Two things.

Mr. SCHUMER. But let us be specific. Let us find out not that people might have been chilled incorrectly, because then we would never pass any law. We could pass a law tomorrow exempting—there is a hearing downstairs on the antitrust exemption for base-

ball. And that someone would be afraid to go a baseball game incorrectly, that does not mean you would change the law. But if it has actually been chilled by government action, then you have a case.

Go ahead.

Reverend MAHONEY. If there ever is a baseball season.

Mr. SCHUMER. Right.

Reverend MAHONEY. It is one thing, Congressman, for us in this situation to talk about it. It is an intimidating thing for the average American citizen to be photographed by Federal marshals with the mandate of the Department of Justice. And it seems to me—

And I know you are committed. We argue on many issues, and I know you are committed to free speech. That is why I am struggling here in my mind that you could be so cavalier that citizens—it is not just 10 or 20. It is hundreds of people are afraid to go out because this Federal Government is photographing, taking their license plates. That is not a light thing. Now granted maybe it does not stack up with the horrible deaths in Pensacola, but it nevertheless is not a light thing.

And when I come here I almost feel like you are saying, tough. And it is not tough. It is people's—the first amendment is the cornerstone of this country. And this is an outgrowth of that.

The Attorneys General—two Assistant Attorneys General were not even sure. You even said yourself, do we have one Department of Justice? They do not even know how to implement this. So there is a lot of confusion, there is a lot of fear, and, frankly, Congressman, it is getting worse as the Federal Government takes more and more steps in this act.

Mr. SCHUMER. What I would ask you to do, Reverend Mahoney, is specifically submit instances.

Reverend MAHONEY. I will do that.

Mr. SCHUMER. And we will make those as part of the record. Not in general but specific instances. That is what we would have to see.

Certainly, if the Federal marshals are going around all over the place any time there is a peaceful demonstration, they should not be. On the other hand, if there is violence at that clinic and their job under FACE—I don't think they are doing it enough—is to investigate, taking pictures and writing license plates at the scene of a crime, that is part of the prosecutorial statute.

Reverend MAHONEY. There have only been shootings in Pensacola.

Mr. SCHUMER. No. No. There has been violence in other places.

If there is a blockade at a place, FACE would allow an investigative Federal authority to go in and investigate. Investigation means talking to people, taking license plate numbers, taking pictures. So I would like to know instances where, not in pursuit of violations of the law, marshals have done that. And that would be wrong, and I would stop it, and Don Edwards has been a leader in trying to stop that.

OK, I want to thank the panel. I want to thank the audience, who went through all these votes.

The record will remain open for the submission of further testimony. I think this was a very good hearing.

Again, my conclusion is not that there has been a problem on the freedom of speech side. There has been a problem in the Justice Department on the violence and obstruction side, not doing quite enough, and I hope they will. But, in any case, I think it has been an educational process for everybody here.

I want to thank Melanie Sloan, who worked so hard not only on the bill but on this hearing; Vicki Shabo, who is our clerk here, who helped with the work; Andrew Cowin, who is the minority counsel, who sat through the whole hearing and listened to the witnesses he chose or his boss chose.

And, finally, the unsung heroes of our hearings all the time, the people who take all those notes. And today our stenographer is Pam Garland. Thank you, Pam.

And, with that, the hearing is adjourned.

[Whereupon, at 2:40 p.m., the subcommittee adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING

STATEMENT OF THE  
AMERICAN CIVIL LIBERTIES UNION  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE  
CONCERNING IMPLEMENTATION OF  
THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT

OCTOBER 12, 1994

(123)

The American Civil Liberties Union is pleased to submit this written statement concerning the implementation of the Freedom of Access to Clinic Entrances Act (FACE). My name is Elizabeth Symonds, and I am a legislative counsel with the ACLU.

The ACLU is a nationwide, non-profit, nonpartisan organization with nearly 300,000 members, dedicated to the principles of liberty and equality embodied in the United States Constitution. Since its founding in 1920, the ACLU has participated in numerous civil liberties cases in the federal and state courts involving the rights of free expression, free association, religious freedom, and reproductive freedom. The ACLU also plays an active role before the Congress when legislation involving these issues arises. Because the ACLU is committed to the advancement of all of these constitutional rights, it assisted in the drafting of FACE and worked for its enactment. It has continued to monitor carefully the enforcement of the statute, and has participated as amicus curiae in several of the cases challenging the constitutionality of the law.

The Freedom of Access to Clinic Entrances Act is constitutional on its face, and has been applied by law enforcement officials in a manner that is completely consistent with the constitutional rights of demonstrators. This written statement will review a number of the arguments that opponents of the law have used in their efforts to show that FACE is unconstitutional as written or as enforced. Our analysis refutes

all of these contentions, and one key fact remains clear: every court that has ruled on a challenge to FACE has held that it is constitutional as written.

1. FACE does not proscribe constitutionally protected speech. FACE prohibits the use of force, true threats of force, physical obstruction, and property damage. None of these activities is protected by the First Amendment. Individuals who commit these crimes and torts may be motivated by moral or religious conviction, but this does not transform their illegal acts into protected conduct. Individuals wishing to express their views about abortion have the same rights as everyone else to speak, pray, chant, sing, and demonstrate. These rights are undisturbed by FACE. But like everyone else, they have no right to communicate their message by shooting doctors, spraying butyric acid on clinic property, or physically barricading reproductive health facilities.

The first court to consider a facial challenge to the statute upheld the law and dismissed the case, holding that the

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: The statute provides for civil and criminal penalties against anyone who

by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services  
. . .

18 U.S.C. § 248(a)(1).

"acts [FACE prohibits] have long been outside the scope of the First Amendment's protection." American Life League v. United States, No. 94-700-A, slip op. at 8, (E.D. Va. June 16, 1994). Other federal district courts that have since ruled on the facial validity of the statute have reiterated or adopted this holding. Riely v. Reno, No. CIV-94-1058-PHX-RGS, 1994 U.S. Dist. LEXIS 11463 at \*16 (D. Ariz. Aug. 12, 1994) ("FACE does not proscribe constitutionally protected speech or expressive activities."); Cook v. Reno, No. 94-0980, slip op. at 4 (W.D. La. Aug. 5, 1994) ("[T]he statute directs its attention to violent, obstructive, and threatening activity, but it in no way implicates the rights of speech and assembly."); Cheffer v. Reno, No. 94-0611-CIV-ORL-18 (M.D. Fla. July 26, 1994) (adopting the opinion of the district court in American Life League v. Reno); Council for Life Coalition v. Reno, No. 94-0843-IEG (CM), slip op. at 8 (S.D. Cal. July 6, 1994) ("FACE criminalizes . . . acts that are outside the scope of the first amendment's protections.").<sup>2</sup> As the court declared in Cook v. Reno:

Violence is the target of this statute, not speech . . . Plaintiffs may therefore carry signs, pass out literature, and attempt oral persuasion, but they may not do so in a manner that involves violence, threats, physical obstruction, intentional injury, and property destruction. [footnote omitted]. At the risk of being redundant, we state once again that the statute directs its attention to violent, obstructive, and

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<sup>2</sup> Cf. United States v. Brock, No. 94-CR-86 (JPS) (E.D. Wis. Sept. 23, 1994) (upholding constitutionality of FACE even if it could be construed to restrict some protected conduct).

threatening activity, but it in no way implicates the rights of speech and assembly.

Slip op. at 3-4.

Federal authorities have brought criminal charges under FACE in only two instances, both involving actions falling far beyond the purview of constitutionality protected expression. In one case, Paul Hill was convicted of killing Dr. John B. Britton and James H. Barrett. New York Times, October 6, 1994, at A. 18. In the second, authorities charged six defendants with violating FACE after they blockaded a Milwaukee clinic by chaining themselves to cars and concrete blocks that barricaded the clinic doors. The defendants' motion to dismiss the charges on constitutional grounds was denied. United States v. Brock, supra.

2. FACE does not punish expression based on either its content or its viewpoint. Because FACE does not punish protected expression, the charge that it discriminates based on the content or viewpoint of an individual's speech is meritless. Congress has simply prohibited certain activity that, while motivated by a certain belief, is neither protected by the First Amendment nor prohibited because of its expressive content. In an analogous example, the destruction or obstruction of polling places to prevent African-Americans from voting may have an

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<sup>3</sup> In addition, the statute's first rule of construction provides: "Nothing in this section shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution." FACE, Section 3 (to be codified at 18 U.S.C. § 248(d)(1)(1994)).

expressive element, but federal penalties aimed at punishing such interference with voting rights are clearly constitutional. See 42 U.S.C.A. § 1971-1973aa-5 (West 1981 & Supp. 1994).

The mere fact that FACE contains an intent requirement does not render it unconstitutional. To the contrary, intent requirements are common in numerous federal laws that prohibit interference with constitutionally protected rights. In fact, the federal law on which FACE is based subjects to criminal penalties "[w]hoever . . . by force or threat of force willfully injures, intimidates or interferes with . . . any person because he is or has been, or in order to intimidate such person" from exercising certain designated rights or participating in certain federal benefits, programs, or activities. 18 U.S.C.A. § 245(b)(1) (West 1969) (emphasis added).

The Supreme Court has recently confirmed that the presence of an intent requirement will not invalidate a statute that is not directed at expression. In a unanimous decision in Wisconsin v. Mitchell, 113 S. Ct. 2194 (1993), the Court upheld a Wisconsin law that imposed enhanced sentences for certain crimes when the convicted defendant had intentionally selected the victim based on race, religion, color, or other immutable characteristics. The defendant in that case charged that he was being punished for his thoughts, opinions or beliefs. The Court disagreed, concluding that Mitchell was subject to enhanced penalties, not for his abstract beliefs, but for acting on his bigotry by severely beating a boy because he was white, *id.* at 2201. That

statute, (like FACE) was "aimed at conduct unprotected by the First Amendment." *Id.*

Even less persuasive is the argument that FACE is viewpoint-based. In fact, the conduct FACE prohibits is punishable whether directed against abortion clinics, their staffs, or their patients, or against centers that counsel women against abortion and in favor of its alternatives. See FACE, section 3 (to be codified at 18 U.S.C. § 248(e)(5) (1994)) (defining reproductive health services broadly to encompass all "counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy"). A statute penalizing violent and obstructive interference with reproductive health services is not viewpoint based. "That [the Plaintiffs] all share the same viewpoint regarding abortion does not in itself demonstrate that some invidious content- or viewpoint-based purpose motivated the [passage of the statute]. It suggests only that those . . . whose conduct violate[s the law] happen to share the same opinion regarding abortions . . . ." Madsen v. Women's Health Ctr., 114 S. Ct. 2516, 2524 (1994).

As to demonstrators outside of reproductive health facilities, the Act creates no "new remedies for interference with [their First Amendment] activites . . . regardless of the point of view expressed." FACE Section 3 (to be codified at 18 U.S.C. § 248(d)(2) (1994)) (emphasis added). Neither those who picket to oppose abortion nor those who demonstrate to support a

clinic and its patients have a cause of action under FACE when they are threatened, obstructed, or assaulted. FACE provides a private cause of action only to those seeking to obtain or provide reproductive health services. FACE, Section .3 (to be codified at U.S.C. § 248(c)(1)(A) (1994)). That is because the statute is about ensuring access, not controlling protest. Thus, all district courts to have considered the question have held that FACE is viewpoint-neutral. American Life League v. Reno, slip op. at 11-14; Riely v. Reno, 1994 U.S. Dist. LEXIS 11463, at \*26-27; Cook v. Reno, slip op. at 5; Council for Life Coalition v. Reno, slip op. at 8-10; United States v. Brock, slip op. at 17 n.19.

3. FACE is neither overbroad nor vague.

All of the courts that have considered the question have rejected the argument that FACE is overbroad and vague. American Life League v. Reno, slip op. at 8-11; Riely v. Reno, 1994 U.S. Dist. LEXIS 11463, at 33-38; Council for Life Coalition v. Reno, slip op. at 12-15; see also Cook v. Reno, slip op. at 4-5; United States v. Brock, slip op. at 26-27.

FACE is not overbroad, as it does not sweep protected expression within its proscriptions. As the court noted in United States v. Brock, "FACE is not only not 'substantially' overbroad, it is not overbroad at all." Slip op. at 26. Other courts, confronting overbreadth challenges to statutes similar to FACE, have consistently upheld the statutes. See Cameron v. Johnson, 390 US 611 (1968) (upholding Mississippi law prohibiting

" picketing or mass demonstatrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises.'" Id. at 612 n.1) and Sherman v. State, 626 S.W.2d 520, 526-27 (Tex. Crim. App. 1981) (rejecting overbreadth challenge to Texas statute that in relevant part penalized picketing that "obstruct[ed]" the "free ingress to or egress from any entrance to any premises being picketed").

In addition, because its key terms are either explicitly defined in a manner that avoids infringement of free speech or else readily lend themselves to interpretation in line with established constitutional principles, the statute is not vague. As the Court explained in Council for Life v. Reno, FACE includes precise definitions of essential terms such as "intimidate," "interfere," and "physical obstruction," and most of the operative words are taken from other laws that the Supreme Court and the lower courts have held are not constitutionally vague. Slip op. at 14.<sup>4</sup> FACE provides "fair notice to those to whom [it] is directed," United States of America v. Brock, slip op. at 27 (citing Grayned v. City of Rockford, 408 U.S. 104, 112 (1972)).

4. FACE does not infringe the free exercise of religion.  
FACE does not violate First Amendment or statutory rights to

<sup>4</sup> For example, the Court in Cameron, rejected an argument that the terms "obstruct" and "interfere," used in the context of a statute designed to safeguard access, were vague. The Court summarily found the terms "clear[] and precise[]," and acknowledged that they "plainly require no guess[ing] at [their] meaning." 390 U.S. at 612 n.2, 616.

freedom of religion. See American Life League v. Reno, slip op. at 13-15; Riely v. Reno, 1994 U.S. Dist. LEXIS 11463 at \*51-52; Council for Life Coalition v. Reno, slip op. at 15-18; United States v. Brock, slip op. at 27. Activity that seriously harms others, though it may be motivated by sincere religious beliefs, finds no refuge either in the Free Exercise Clause or the Religious Freedom Restoration Act, 42 U.S.C.A. §§ 2000bb to 4 (West Supp. 1982-1993). The use of force, threats of force, physical obstruction, and property damage, even if motivated by religious belief, are no more protected by the Free Exercise Clause than by the Free Speech Clause. No one has a religious right to injure, blockade or threaten force against another.

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In conclusion, the Freedom of Access to Clinic Entrances Act is facially constitutional and officials have only utilized it against individuals whose actions were clearly not constitutionally protected. It is a carefully crafted statute that will help to ensure the availability of reproductive health services while at the same time respecting rights of free expression and religion.

## EXAMPLE WHERE PRO-LIFE SPEECH HAS BEEN INFRINGED UPON BY "FACE"

On July 8, 1994, Pastor Steven McCallister was counseling outside the Redding Feminist Women's Health Center. The Center is surrounded by a eight-foot high wood fence. Mr. McCallister saw a woman on the other side of the fence in the parking lot, and he began to speak to her. He called out to her that there is a better choice, and that adoption should be considered. He said that he had adopted three children and would adopt another.

The woman got very angry and came up to the fence and started yelling at him. He tried to converse with her, but when he could not, he walked away to the other side of the clinic.

The woman, Desiree Kelsey, brought suit in federal court under the Freedom of Access to Clinic Entrances (FACE) Act, asking for \$5,000.00 in damages, injunctive and declaratory relief, and attorneys' fees. The complaint alleges that Mr. McCallister "approached, intimidated, and harassed plaintiff, despite plaintiff's repeated requests that defendant cease such activities." (*Kelsey v. McCallister*, CVS 94-1375 EJG (E.D.CA))

This civil lawsuit is clearly meant to deter Mr. McCallister from continuing his pro-life efforts outside of the abortion clinic. He was on the other side of an eight-foot fence, and yet he is being sued under a bill which permits civil lawsuits when someone has been subjected to "force or threat of force or...physical obstruction."

Although Mr. McCallister is likely to prevail in this lawsuit, he will have to pay thousands of dollars just to defend his free speech rights, and, under FACE, he may not recoup these costs even if the lawsuit is shown to be frivolous and without merit. Under FACE, only the person who initiates the lawsuit may be awarded appropriate relief, including attorneys' fees.

It appears that Ms. Kelsey is acting in collaboration with the abortion clinic. Her attorney, George Kuceras, is also representing the abortion clinic in a lawsuit which was filed in June 1994 against Mr. McCallister and others. The clinic was unsuccessful in getting a preliminary injunction against these individuals and a motion to strike the entire complaint is pending.

This case is a clear example of how the FACE Act gives abortion clinics and their supporters a powerful legal weapon to use against pro-lifers exercising their free speech rights, and provides an incentive for abortion providers and others to file harassing lawsuits.

Katie Short  
Attorney, Life Legal Defense Foundation

## EXAMPLE WHERE PRO-LIFE SPEECH HAS BEEN CHILLED BY FEDERAL ACTION

The Commonwealth Women's Clinic in Falls Church, Virginia, has been the site of weekly legal pro-life pickets. Pro-life men, women and children regularly come to the clinic on Saturday mornings to pray the rosary and offer information on alternatives to abortion to women entering the clinic. This peaceful pro-life effort has been continuous for at least four years and no pro-life person has been arrested at the clinic during that time.

On July 29, 1994, the Commonwealth Women's Clinic in Falls Church, Virginia, was the subject of an arson attack and was reported to have sustained \$10,000 in damages from a fire ignited outside the clinic.

The next morning, from 7:00 - 10:00 a.m., the regular pro-life activities took place. No law enforcement authority -- city, state, or federal -- was present, only TV crews and news media. The Bureau of Alcohol, Tobacco and Firearms held a press conference at the clinic at 1:00 p.m. The next weekend, and each weekend since then, the prayer vigils and sidewalk counseling continued.

At no time since the attack has any of the regular protestors even been asked about the clinic attack by any law enforcement authority, presumably because the police and BATF have no reason to suspect these persons of having any role in the explosion or of even knowing who might have done it.

Nevertheless, since that time, two to four U.S. marshals have been continuously present outside the clinic, and one weekend a U.S. marshal photographed pro-lifers as they prayed on the public sidewalk.

To be photographed by a Federal law enforcement official without explanation or cause is a form of intimidation by a person acting under the color of law that is completely unwarranted. The men and women who participated in the prayer vigil are law-abiding citizens who have never been accused of wrong-doing or criminal misconduct. Pro-life individuals were photographed by a U.S. marshal merely for praying on a public sidewalk outside of an abortion clinic.

When a federal marshal photographs individuals engaged in a legal picket outside of an abortion clinic, it confuses the average public citizen who is unfamiliar with the details of the FACE Act. These individuals are led to believe that peaceful pickets might be prohibited under the new federal law, and this clearly has a chilling effect on free speech.

Rita Marie Sargis  
Pro-life sidewalk counselor at Commonwealth  
Women's Clinic

30 AP 09-29-94 00:27 AET

## Physician Who Replaced Slain Doctor Facing Discipline in Four States

PENSACOLA, Fla. (AP) The physician replacing a doctor shot to death outside an abortion clinic has had his license suspended in two states and restricted in two others.

Dr. Steven Chase Brigham began working at the Ladies Center after the July 29 shooting of Dr. John B. Britton and retired Air Force Lt. Col. James H. Barrett outside a Pensacola clinic.

He is listed in good standing with the Florida Board of Medicine.

But New York suspended Brigham's license in January, accusing him of injuring two patients in 1992 and 1993. His suspension is under appeal. Georgia suspended his license based on the New York action and for failure to pay licensing fees.

In February, New Jersey restricted his license to allow him to perform only first-trimester abortions after state regulators received complaints accusing Brigham of improper care, deception, dishonesty, malpractice and professional misconduct.

He is scheduled for an Oct. 24 administrative hearing that could lead to further action. California also has imposed a first-trimester limitation on Brigham's work.

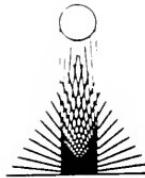
Brigham voluntarily gave up his Pennsylvania license in 1992 after an attorney general's investigation. The results of that investigation are confidential.

But Planned Parenthood of Lancaster County, Pa., issued a consumer warning in 1991 that accused Brigham of misleading advertising, failure to do proper follow-up and unsavory collection practices including taking patients' jewelry as collateral until they paid their bills.

Brigham, who has offices in New Jersey, and Ladies Center administrator Linda Taggart could not be reached Wednesday for comment.

Brigham's attorney said licensing boards have put Brigham under greater scrutiny than other doctors because he does abortions.

"He very much wants to provide an important service and he feels he's been impeded in that," said Jonathan Vipond III.



September 22, 1994

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**CONGRESSIONAL HEARINGS ON FACE  
Statement by Deborah Ellis, Legal Director**

This country doesn't need another murder of a doctor or clinic escort to realize that anti-abortion fanatics will stop at nothing to put an end to a woman's constitutional right to abortion. The federal government must use every legal avenue available to stop the violence and terror.

The federal government is armed with important legal tools to stop anti-abortion zealots from waging a war on women and their doctors. The government's most valuable tool is the newly enacted Freedom of Access to Clinic Entrances Act (FACE.)

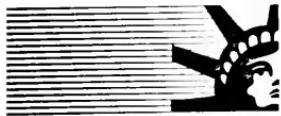
With the strong provisions in FACE that outlaw obstruction of clinics and intimidation and interference with patients, the federal government now has the means to carry out an aggressive strategy against anti-abortion extremists. This ammunition must be used continuously and vigorously.

Attorney General Reno's move to deploy federal marshals at vulnerable clinics and the prosecution of Paul Hill under FACE are strong first steps. But additional action is necessary, such as buffer zones in critical areas like Pensacola, investigation of conspiracy, enforcement of existing injunctions and strong prosecution. Without these federal interventions, the deployment of marshals will merely serve as a quick and temporary fix to a major problem. NOW LDEF calls on the federal government to continue to exhaust every measure available to stop the violence.

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*Editor's Note: FACE was developed in response to the Supreme Court's failure in *Bray v. Alexandria Women's Health Clinic* to allow a federal civil rights law to be used to stop anti-abortion violence. NOW Legal Defense Fund argued *Bray* before the Court. NOW LDEF's publication: *Stop the Terrorism: Understanding Your Rights Under the Freedom of Access to Clinic Entrances Act* is available by calling 212-925-6635. NOW Legal Defense Fund is a separate, but sister organization to NOW in Washington, D.C. and should be referred to by its full name or NOW LDEF.*

For further information, please call NOW LDEF's New York headquarters, 212/925-6635.

**NARAL Promoting Reproductive Choices**

**STATEMENT OF KATE MICHELMAN**  
President  
National Abortion and Reproductive  
Rights Action League (NARAL)

**CONTACT:** Karen Schneider  
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On Congressman Schumer's Oversight Hearing on the  
Freedom of Access to Clinic Entrances Act (FACE)

September 22, 1994

Enacting the Freedom of Access to Clinic Entrances Act was critical to combatting the escalating anti-choice violence, but merely putting a law on the books cannot stop the harassment and terror at women's reproductive health clinics. We commend federal law enforcement authorities for the steps they have taken under FACE, but urge them to do much more by increasing their vigilance and prosecuting all violators to the full extent of the law. Further enforcement is badly needed. Since FACE was signed into law last May, anti-choice extremists have killed a doctor and his escort, forced one reproductive health clinic to shut down and prompted doctors to stop performing abortions. The threats, assaults, arson, bombings and shootings are not isolated incidents -- they are part of a nationwide campaign of terror designed to make abortion unavailable. FACE can be an important tool to stem the violence, but only if federal law enforcement authorities vigorously enforce the law and dispatch U.S. marshals when anti-choice extremists threaten or harass women and abortion providers.

*National Abortion  
and Reproductive Rights  
Action League*

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